IN THE

SUPREME COURT OF THE UNITED STATES.

JOSEPH PARKER CAMP, APPELLANT,

v.

KATE WILLARD BOYD, HENRY K. WILLARD, AND GEORGE E. HOWE, DEVISEES IN TRUST UNDER THE LAST WILL OF CALEB C. WILLARD, DECEASED.

Appeal from the Court of Appeals of the District of Columbia.

Assignment of Errors by Appellant.

Comes the appellant, Joseph Parker Camp, by his attorney, William E. Ambrose, and says that in the record of said cause in the said Court of Appeals there are manifest errors, apparent, to the prejudice of the just rights of appellant.

That it appears from said record that on January 22, 1906, appellees, Kate Willard Boyd, Henry K. Willard and George E. Howe, as devisees under the last will of Caleb C. Willard, deceased, filed their bill in equity in the Supreme Court of the District of Columbia against appellant as sole defendant, and that said bill was subsequently amended by the filing, as exhibits thereto, of copies of several instruments and papers referred to therein, and under and by virtue of which instruments and papers said complainants claimed in said bill, that the equitable title which was formerly vested in a certain Samuel Blodget, in and to three several parts of lot 20 in square 254 in the City of Washington, and together comprising the whole of said lot, and described, respectively, in said bill as parcels A, B and C, had become and was vested in them, said complainants; and they prayed that the said defendant, (appellant), who claimed that the said title of the said Blodg had become and was vested in him, as assignee of the heirs of said Blodget, be enjoined and restrained from further prosecuting a certain action of ejectment, which had been instituted in the said Supreme Court of the District of Columbia by said defendant, against said Caleb C. Willard, in his life time, for the recovery of said lot.

That it further appears from said record that the defendant interposed a demurrer to said bill, assigning as cause for the same that

said bill did not set forth such a case as entitled the complainants to the relief prayed; that the complainant had a full, complete and adequate remedy at law, and that the said Supreme Court of the District of Columbia was without jurisdiction in the premises.

That it further appears from said record that the said cause came on to be heard, in the said Supreme Court upon the said demurrer, and that it was adjudged, ordered and decreed, by the said Supreme Court, on December 28, 1908, that said demurrer be and is overruled; and the said defendant electing, in open court, to stand on his said demurrer, that it was thereupon further adjudged, ordered and decreed by the said Supreme Court, on said day, that the said complainants were vested with all of the title to said lot and the said three several parts thereof, which was formerly vested in the said Samuel Blodget, and that the said defendant, be perpetually enjoined and restrained from the further prosecution of his said action of ejectment for the recovery of said lot; and further, that said defendant be perpetually enjoined and restrained from instituting any further proceedings, either at law or in equity, for the possession of, or for the assertion of any claim to the said lot, or to any part thereof, derived by him, from or through the said Samuel Blodget, deceased.

That it further appears from said record, that from the said decree overruling his said demurrer, and enjoining and restraining him, as aforesaid, the defendant appealed to the said Court of Appeals of the District of Columbia; and that the said cause coming on to be heard in the said Court of Appeals of the District of Columbia, upon the said appeal, it was by the said Court of Appeals, on May 10, 1910, adjudged, ordered and decreed that the said decree of the Supreme Court of the District of Columbia be and is affirmed with costs.

And appellant says that there is error in the record and proceedings in the said Court of Appeals, in said cause, in the following particulars:

1. The said Court of Appeals erred in affirming the said decree of the Supreme Court of the District of Columbia, because it appears from the facts averred in said bill of complaint, that the grounds assigned in support of said demurrer were well founded in law, and that the said demurrer should have been sustained and the said bill dismissed by the said Supreme Court.

2. The said Court of Appeals erred, for the same reasons, in not reversing the said decree of the said Supreme Court, and in not remanding the said cause to the said Supreme Court, with directions to vacate its said decree, overruling said demurrer, and enjoining and restraining the defendant, as aforesaid, and to enter a decree sustaining the said demurrer and dismissing said bill.

3. The said Court of Appeals erred in affirming and in not reversing the said decree of the Supreme Court of the District of Columbia, in which decree it was declared that the complainants were vested with the equitable title in fee-simple formerly vested in said Samuel Blodget, deceased, in and to the several parts of said lot 20 respectively described in said bill as Parcels A, B and C, and by which decree the said defendant was perpetually enjoined and restrained from

the further prosecution of the said action of ejectment and from instituting any further proceedings, either at law or in equity, for the possession of or for the assertion of any claim to any of the said Parcels because the facts averred in said bill in support of the claim of title to said Parcel C, in fee-simple, made by said complainants are available to them as matter of defence in the said ejectment suit; and that as to the facts averred in said bill in support of the claim of title to said Parcels A and B, respectively, in fee-simple, made by said complainants, it is apparent that said complainants, are invested with no title or right whatsoever in or to either of said Parcels A and B under or by virtue of said facts.

Wherefore appellant prays that the said decree of the Court of Appeals of the District of Columbia may be reversed and said cause remanded to the said Court of Appeals with directions to vacate its said decree and to reverse the said decree of the Supreme Court of the District of Columbia and to remand said cause to the said Supreme Court of the District of Columbia with directions to vacate its said decree and to enter a decree sustaining said demurrer and dismissing said bill.

WM. E. AMBROSE,
Solicitor for Appellant.

[Endorsed:] 71/22214. Joseph Parker Camp, Appellant, vs. Kate Willard Boyd, Henry K. Willard, and George E. Howe, Devisees in trust under the last will of Caleb C. Willard, deceased. Assignment of Errors. William Earl Ambrose, Attorney and Counsellor at Law, Rooms 4-5-6-7-8-9, Appeals Building, 426 Fifth St. N. W., Washington, D. C.

[Endorsed:] File No. 22,214. Supreme Court U. S. October Term, 1912. Term No. 71. Joseph Parker Camp, Appellant, vs. Kate Willard Boyd et al. Assignment of Errors. Filed December 16, 1912.

(22,214)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 593.

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD, HENRY K. WILLARD, AND GEORGE E. HOWE, DEVISEES IN TRUST UNDER THE LAST WILL OF CALEB C. WILLARD, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page.
Caption	1
Transcript from the supreme court of the District of Columbia	1
Caption	1
Bill of complaint	1
Exhibit "A"—Summons and declaration, law, No. 26756	16
"B"—Deed, Blodgett to Daugherty, April 13, 1801	18
"C"—Deed, Blodgett to Frethey, April 14, 1801	20
"D"—Deed, Blodgett to Fennell, April 20, 1804	23
"E"—Deed, Blodgett to Johnson, Junior, *et al.*, January 28, 1794	25
Restraining order	27
Marshal's return	27
Order for appearance of absent defendant	28
Proof of publication	28
Affidavit of M. W. Moore	28
Copy of notice	29
Affidavit of Thaddeus F. Robbins	29
Motion for filing of exhibit	30
Schedule referred to in foregoing motion	31

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[7544]

	Page.
Order permitting amendment to bill	32
Demurrer to bill	33
Order sustaining demurrer and fixing time to plead	34
Complainants' Exhibit "F"—Will of C. C. Willard	34
"G"—Deed, Brent to Peter *et al.*, April 3, 1807.	37
"H"—Deed, Brent to Peter *et al.*, Jan. 15, 1807.	42
"I"—Deed, Davidson to Glover, May 8, 1818.	45
"J"—Deed, Pratt *et al.*, to Bickley, Oct. 31, 1806.	48
"K"—Deed, Blodgett to Forrest *et al.*, July 7, 1795	50
"L"—Deed, Bickley to Daugherty *et al.*, May 1, 1813	52
"M"—Will of James Daugherty	54
"N"—Deed, Byrne to Cover, July 30, 1847	55
"O"—Deed, Byrne to Redin, Feb. 19, 1848	57
"P"—Deed, Redin *et al.* to Isherwood, September 25, 1852	60
"Q"—Deed, Isherwood to Willard, May 4, 1882.	64
"R"—Deed, Frethy to Betz, Sept. 19, 1801	66
"S"—Deed, Betz to Betz, January 24, 1803	69
"T"—Deed, Betz to Thorp, February 15, 1804.	71
"U"—Deed, Corporation to Dowling, August 17, 1830	73
"V"—Deed, Dowling to Howe, May 30, 1831	75
"W"—Deed, Howe to Dowling, July 18, 1835	77
"X"—Will of R. F. Howe	81
"Y"—Will of William Dowling	82
"Z"—Deed, Reeder to Hosmer, Jan. 13, 1863.	84
A 1—Deed, Dowling to Ennis, Sept. 11, 1865.	85
A 2—Deed, Ennis to Isherwood, May 11, 1866.	86
A 3—Deed, White to Isherwood, Sept. 21, 1852.	88
A 4—Deed, Blodgett to Frethey, April 14, 1801.	91
A 5—Decree, equity, No. 455	93
A 6—Bill, equity, No. 455	95
A 7—Decree, chancery, No. 478	96
No. A 8—Bill, Hayman *vs.* Hayman *et al.*	97
No. A 9—Will of Mary Daugherty	108
No. A 10—Plat	110
No. A 11—Plat	110
No. A 12—Record in case of Bickley *vs.* Peter *et al.*	110
Bill of complaint	110
Exhibit A—Lottery advertisement	119
Exhibit B—Agreement of Deakins & Blodgett, Sept. 20, 1793.	120
Exhibit C—Deed, Blodgett to Johnson & Peter, January 28, 1794	123
Exhibit D—Judgment of supreme court of Pennsylvania	124
Exhibit E—Deed, Fendall to Blodgett, January 12, 1792	129

Page.

Complainants' Exhibit No. A 12—*Continued.*

Exhibit F—Certificate of Monroe, superintendant..... 131
Exhibit G—Deed, Baltzer to Blodgett, September 25, 1793.. 131
Exhibit H—Deed, Burnes to Blodgett, March 18, 1793..... 133
Exhibit I—Deed, Burnes to Blodgett, March 18, 1793..... 134
Exhibit K—Certificate of commissioners, October 22, 1792... 135
Exhibit L—Certificate of commissioners, October 22, 1792... 135
Exhibit N—Certificate of commissioners, August 31, 1801.... 136
Exhibit O—Deed, Blodgett to Forrest *et al.*, July 7, 1795..... 136
Exhibit P—Deed, Forrest to Stoddert, September 1, 1801... 138
Attachment for Edward Frithy..... 140
Attachment for Wm. Thornton..... 140
Attachment for Robert Brent 141
Petition for order of publication..... 142
Order of publication..... 142
Answer of Samuel Blodgett..... 144
Answer of William Thornton..... 147
Answer of Elias B. Caldwell..... 149
Answer of Thomas Munroe..... 150
Answer of Benjamin Stoddert..... 152
Answer of Thomas Peter..... 154
Answer of Edward Frithy..... 155
Answer of Robert Brent 156
Agreement of counsel..... 157
Statement of sales by trustee..... 157
Expenses of trustee..... 159
Decree, July —, 1804..... 160
Decree..... 161
Bond of trustee..... 165
Notice of sale, &c..... 166
Order of ratification, &c..... 168
Certificate of publication..... 170
Order to trustee to convey property.. 171
Report of trustee 171
Order approving report..... 173
Assignment, Pratt & Budd to Bickley, October 31, 1806..... 174
Petition of trustee, January 14, 1807.. 177
Petition of trustee, June 29, 1809.... 178
Supplemental bill 179
Answer of Sam. Blodgett..... 182
Decree..... 182
Application of Washington Boyd, &c. 183
Order of court, January 18, 1820..... 185
Clerk's certificate to record..... 185

	Page.
Complainants' Exhibit No. A 13—Record in case of Dowling *vs.* Dowling.	185
Application for appointment of guardian	185
Order appointing guardian *ad litem*	186
Answer of guardian *ad litem*	186
First order of reference to auditor	187
Auditor's report on sale, &c	187
Agreement of solicitors to decree	189
Bond of trustee	189
Account of sale	190
Trustee's report	191
Ratification *nisi*, &c	193
Report on distribution	193
Final ratification of sale	196
Ratification of auditor's report	196
Clerk's certificate to record	196
Complainants' Exhibit No. A 14—Deed, Burns to Beall & Gantt, June 28, 1791	197
A. H. No. 2—Abstract of title	200
Demurrer	210
Opinion	211
Final decree	216
Appeal noted and bond fixed	217
Momorandum: Appeal bond approved and filed	217
Stipulation to file exhibit	218
Directions to clerk for preparation of transcript of record	218
Order extending time for filing record	219
Order to clerk to open papers in law cause No. 46756	219
Clerk's certificate	219
Additional transcript from supreme court of the District of Columbia	221
Stipulation for addition to record	221
Exhibit B. F. I. No. 1—Abstract of title	222
Clerk's certificate	225
Minute entries of argument	226
Opinion	226
Decree	233
Order allowing appeal	233
Appeal bond	233
Citation and service	234
Clerk's certificate	235

In the Court of Appeals of the District of Columbia

No. 1999.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD ET AL.

a Supreme Court of the District of Columbia.

Equity. No. 25974.

KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE. Devisees in Trust under the Last Will of Caleb C. Willard, Deceased, Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed January 22, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE. Devisees in Trust under the Last Will of Caleb C. Willard, Deceased, Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

To the Supreme Court of the District of Columbia, holding an Equity Court for the said District:

The bill of complaint of the above named complainants, Kate Willard Boyd, Henry K. Willard and George E. Howe, Devisees in

Trust under the last will of Caleb C. Willard, deceased, respectfully showeth unto the Court as follows:

First. That they are all citizens of the United States and residents of the District of Columbia, save the complainant, George E. Howe, who is a citizen of the State of Massachusetts and a resident of the City of Cambridge in said State. That the complainants file this bill in their own right as Devisees in Trust under the last will of Caleb C. Willard, late of the District of Columbia, as is more fully hereinafter set forth.

2 Second. That the defendant, Joseph Parker Camp, is, complainants believe, a citizen of the United States and a resident of the State of Pennsylvania, and is sued in his own right.

Third. That the said Caleb C. Willard died in Atlantic City in the State of New Jersey, where he was temporarily dwelling, on the second day of August, 1905, and that he had been for many years a resident of the District of Columbia, and that the said District was the place of his last domicile. That he left a last will and testament dated on the 12th day of July, 1905, which was duly admitted to probate and record as his last will and testament and as a valid will of realty by the Supreme Court of the District of Columbia, holding a Probate Court, on the 29th day of August, 1905. That by the provisions of the said last will and testament all of the real estate owned by the said testator at the time of his death was devised to the complainants and to their heirs and assigns in and upon certain trusts which are not material to the purposes of this bill.

Will Book No. 61, f. 356. Exhibit F.

Fourth. That among the real estate owned by the said testator at the time of his death was the following lot of ground situate in the City of Washington, District of Columbia, to wit, Original Lot numbered twenty (20) in Square numbered two hundred and fifty-four (254) as the same are laid down on the ground plan or map of the said City. That under the said will, the complainants became and are seized of whatever title the said testator had at the time of his death to the said lot of ground.

3 Fifth. That on the 12th day of February, 1904, the defendant, Joseph Parker Camp, instituted certain actions of ejectment, to recover possession of the said lot, in the Supreme Court of the District of Columbia, against the said Caleb C. Willard, who was then living, as defendant, said action being At Law No. 26756, and which action was pending at the time of the death of said Willard. That thereafter and on the 22nd day of December, 1905, the attorney of record for the said Camp suggested the death of the said defendant Willard but issued no process against the complainants, as his devisees, as is required by Section 236 of the Code of Laws relating to the District of Columbia. A true copy of the original declaration in the said cause is filed herewith, marked Exhibit "A" and prayed to be read herewith and taken as a part hereof. That prior to the filing of the said declaration and on the 8th day of October, 1903, the same defendant, Camp, filed two declarations in ejectment against William G. Pond and George C. Bergling, *each*

tenants of the said Willard, in which a fractional part of the said lot was sought to be recovered. Of his own motion, however, the said Camp dismissed both of these cases on the 12th day of February, 1904.

Sixth. In the division between the United States Commissioners and one David Burns, the original proprietor, the whole of said lot numbered twenty was allotted to the Commissioners aforesaid, and was subsequently sold by them to one Samuel Blodget; but no conveyance was made by them to Blodget, and thereby the said Blodget acquired only an equitable interest in the said lot.

By deed dated January 28th, 1794, and duly recorded on
4 the 23rd day of April, 1794, in Liber "B" No. 2, at folio No. 9 *et seq.*, of the Land Records of the District of Columbia, said Blodget conveyed all his real estate in the City of Washington, D. C., including the lot in question, to Thomas Johnson, Jr., and Thomas Peter, in trust to indemnify the United States Commissioners from all loss, costs, damages and charges on account of the lottery commonly known as the "Hotel Lottery," and for securing the payment of the prizes drawn in said lottery. Copy of said deed is filed herewith marked Exhibit "E" and prayed to be read herewith and taken as a part hereof.

[Recorded, Land Records D. C., Ap'l 13", 1801, Liber G, folio 316.—Exhibit B.]*

By lease dated April 13th, 1801, he demised a part of the lot, fronting 20 feet on F Street, being the East 20 feet thereof, and which for brevity the complainants will hereinafter designate as Parcel "A," to one James Dougherty.

[Recorded Oct. 7", 1801, Liber G, folio 299, Land Rec. D. C.—Exhibit C.]*

By lease dated April 14th, 1801, he demised the West 19 feet 11½ inches of said lot, which for brevity the compiainants will hereinafter designate as Parcel "B," to one Edward Frethy.

[Recorded Ap'l 30", 1804, Liber K, f. 317, Land Rec. D. C.—Exhibit D.]*

By lease dated April 20th, 1804, he demised the middle 11 feet 11 inches of said lot, which for brevity the complainants will hereinafter designate as Parcel "C," to one Edward Fennell.

These leases were all for the periods of 99 years, renewable forever, with rights of purchase to the lessees, respectively, for the respective amounts in said leases prescribed, all of which will more fully appear upon reference to certified copies of said leases marked Exhibits "B," "C" and "D," filed herewith and prayed to be taken and
5 read as a part hereof. Each of these leases was duly recorded in the Land Records of the District of Columbia.

On the 9th of October, 1802, one Robert S. Bickley, instituted proceedings in the then Circuit Court of the District of Columbia,

[*Words and figures enclosed in brackets on margin in copy.]

against said Blodget and others, the said proceedings being Chancery Cause No. 8, Docket No. 1. The original bill in said cause set up the lottery conducted by the said Blodget as aforesaid, and averred that the complainant therein was the possessor and owner of a certain ticket numbered 37531, which drew the prize known as the "Superb Hotel etc., to cost Fifty Thousand (50000) Dollars," but which said prize never had been delivered to the said complainant as in Law and Equity should have been done. The said bill also set up a certain judgment, which had been recovered by the complainant on account of the failure of said Blodget to pay said prize, awarding complainant the hotel and lots of ground thereto belonging and also the sum of Twenty-one Thousand Five Hundred (21500) Dollars, with costs of suit, but which said judgment as was averred had never been performed. In consideration of these facts, the complainant prayed that the said Court might order the said Blodget to convey the said Hotel property to him, and also that such other property as he then owned, described in the bill of complaint, should be sold, and the proceeds thereof applied to the payment of the said judgment.

Answers were duly filed in the said cause and testimony taken; and thereupon the said Court passed a decree, dated October 4th, 1805, directing that the said Blodget should perform the judg-
6 ment which the complainant had recovered against him, by a certain day therein limited, and, in default thereof, that the property owned by said Blodget and described in said decree, being a large number of lots of ground in said District and apparently sufficient in value to satisfy the plaintiff's claim, and, among other lots and squares, the "ground rents" owned by the said Blodget in so much of lot 20, in square 254, as was conveyed under the leases to Dougherty and Frethy, aforesaid, should be sold, and the proceeds applied towards the satisfaction of said judgment; and Daniel Carroll Brent, Esq., was appointed trustee to make said sale.

The said Blodget failed to perform the said decree, and thereupon the trustee aforesaid advertised and sold the property therein directed, including the "ground rents" aforesaid, under said leases; the ground rent of Parcel "A" was sold to one Henry Pratt, and the ground rent of Parcel "B" to one Robert F. Howe.

The report of the trustee stated that he had sold all of the property and "ground rents" decreed to be sold, described in the schedule annexed to his report; as to lot twenty in square 254; ground rent on Dougherty lease sold to one Henry Pratt for Three Hundred and Sixty (360) Dollars, and ground rent on Frethy lease sold to one Robert F. Howe for Four Hundred (400) Dollars.

[Bickley deed, dated Ap'l 3, 1807; Rec. Ap'l 4", 1807, Liber R 17, f. 26.—Exhibit G.]*

[Howe deed, dated Jan. 15", '07; Rec. June 16", 1807, in L. S. 18, f. 1.—Ex. H.]*

[Blodget deed, Rec. Ap'l 13", 1801, Liber G. F., 316.—Exhibit B.]*

In the deeds from the said trustee is the recital of the decree and sale at public auction, and then follows a list of lots and squares and

[*Words and figures enclosed in brackets on margin in copy.]

the said "ground rents" owned by the said Blodget by indenture made between him and said Dougherty, one of the defendants, bearing date the 13th of April, 1801, and also a similar recital as to the ground rents etc., under the Frethy lease. 7

The granting clause in the trustee's deed is, "doth hereby give, grant, bargain and sell, release and confirm to the said Howe, his heirs and assigns, all the right, title and interest of, in and to the aforementioned squares, lots and portions of ground and 'ground rents,' in the said City of Washington, which was in the said Blodget, and all the right," etc., of the trustee under said deed of trust; a similar recital is in the deed to said Pratt.

The proceeds derived from the sale of the property under said decree of October 4th, 1805, failed to satisfy said judgment and thereupon the said Bickley filed a supplemental bill, on May 30th, 1810, praying that certain other property of Blodget, including the "ground rent and reversionary interest" under the said Fennell lease of Parcel "C" might also be sold in order to have this judgment fully satisfied.

[Glover deed, recorded June 4", 1819, in Liber A. V. 16, folio 20.—Exhibit I.]*

Upon hearing by the Court, this ground rent and reversionary interest, among other lots and squares, was, by decree passed on the 5th day of November, 1813, ordered to be sold, and one Washington Boyd was appointed trustee to make the sale. The report of sale by the said trustee, appears from the record to have been made January 20th, 1817, and is missing from the files; but it appears from the deed from John Davidson, appointed trustee, in the place of Washington Boyd, dated May 8th, 1818, that said ground rent and reversionary interest in Parcel "C" was sold October 14th, 1816, to one Charles Glover, and the sale was ratified by the Court on the 3rd day of June, 1818. 8

And the complainants aver that under the said supplemental bill and decree, a fee simple title from said Glover to said Parcel "C" is vested by mesne conveyances in them.

As has been hereinbefore averred no deed was ever executed by the United States Commissioners to the said Samuel Blodget pursuant to the sale to him of lot twenty in square 254 as hereinbefore set forth.

However, Thomas Munroe (United States Commissioner) was made a party defendant to the said Chancery Cause and he was directed by the decree of October 4th, 1805, to join with the trustee in any and all deeds made to purchasers at the sale therein directed to be made, for the purpose of conveying the record title, which was in the United States, in and to the property which said Blodget had purchased of the said United States.

The said Commissioner did, in pursuance of the order of said Court, join in the execution of the deed to Robert S. Bickley, as to all the property except the said ground rents, but he did not join

See above deeds.

[*Words and figures enclosed in brackets on margin in copy.]

in the trustee's deed to Howe, or to Glover, although he is recited as joining therein as directed by the order of the Court.

The complainants therefore aver that as a matter of Law the record title to said Parcels "A" and "B" is still outstanding in the United States.

[Assignment, dated Oct. 31st, 1806; recorded in Liber Q No. 16, folio 178.—Exhibit J.]*
[Brent to Bickley deed, recorded in Liber R 17, fol. 26, Ap'l 4", 1807.—Exhibit G.]*

9 And the complainants further aver that, with respect to said Parcel "A" the said Pratt bought the same at the sale aforesaid made by Brent, trustee, and he and one George Budd, who appears to have been interested in said bid of Pratt, assigned their interests in the sale to said Robert S. Bickley; and Brent, the trustee, accordingly conveyed direct to Robert S. Bickley, reciting in his deed the assignment to him (Bickley) by Pratt and Budd.

[1st trust, dated Jan. 28, 1794, Ex Liber B. E, folio 9; 2d trust, dated July 7", 1795; recorded July 24", 1795, Liber B. 2, f. 265.—Exhibit K.]*

Thomas Peter, surviving trustee under the Boldget deed of trust first hereinbefore recited, was a defendant in the Bickley Chancery Cause aforesaid, and joined in this deed and conveyed to Bickley all the right, title and interest of, in and to the before described squares, lots and portions of ground, and "ground rents," which the said Thomas Peter derived in and thereto by virtue of the deed of trust aforesaid made by Blodget to himself and Thomas Johnson, Jr., Trustees.

Thomas Munroe, superintendent, etc., was also a party defendant to the said Bickley Chancery Cause, and joined in the trustee's deed, but did not convey the United States title to the ground in question.

[Recorded Sept. 15", 1813, Liber A. F. 31, folio 240.—Exhibit L.]*

Robert S. Bickley, by deed dated May 1st, 1813, conveyed Parcel "A" in fee simple to James Dougherty, the same person who was lessee; the granting clause of this deed of Bickley contains the following recital:—"All that part of lot 20 in Square 254, in the City of Washington, fronting on F Street North 20 feet, which
10 is that part of lot and premises which was heretofore, to wit, on or about the 13th of April, 1801, leased on the conditions therein mentioned by a certain Samuel Blodget to the said James Dougherty, and all the estate, interest and claim of the said Samuel Blodget in and to the said part of said lot and premises which was afterwards sold and conveyed by David C. Brent as trustee under a decree of the said Circuit Court of the District of Columbia, for the County of Washington, to the said Robert S. Bickley, which will

[*Words and figures enclosed in brackets on margin in copy.]

fully appear upon reference being had to the Land Records of the County of Washington, in the District of Columbia."

[Wills No. 3, folio 388.—Exhibit M.]*

James Dougherty, by his will, probated July 11th, 1826, devised all his property to his wife, Mary, absolutely, and Mary Dougherty, by her will, probated August 9th, 1830, devised Parcel "A" to William Hayman, for life, and after his death to his children and their heirs forever.

[Compl'ts' Exhibit A 7.]*

By partition proceedings, No. 478, Chancery Rule 4, in the said Circuit Court, filed March 5th, 1847, this property was sought to be sold; and by a decree dated May 18th, 1847, in said Chancery Cause, William Redin, Esq., was appointed trustee to make said sale. On the 20th of October, 1847, Redin reported that he had made a sale to one John Byrne.

[Liber W. B. 136, folio 23.—Exhibit N.]*

On the 30th of July, 1847, said Byrne executed a deed of trust to one George Cover upon Parcel "A," to secure William Redin, trustee, for the purchase money of this lot.

[Liber (15), J. A. S. 15, f. 283.—Exhibit O.]*

On February 19th, 1848, he executed a further deed of trust to William Redin, trustee, to secure a certain indebtedness.

[Liber J. A. S. 46, f. 198.—Exhibit P.]*
[Rec. Jan. 31st, 1883, Liber 1028, f. 381.—Exhibit Q.]*

11 On the 25th of September, 1852, William Redin and George Cover, trustees, selling under the above deeds of trust, conveyed the said Parcel "A" to one Benjamin F. Isherwood; the said Redin also conveys (in fee) as trustee under the decree in the said partition case; and Benjamin F. Isherwood, on May 4th, 1882, conveyed the whole of lot 20 to the said Caleb C. Willard, he (Isherwood) in the meantime having acquired title to the remaining two portions of the lot, that is, Parcels "B" and "C."

[Recorded Sept. 15", 1813, in Liber A. F. 31, f. 240.—Exhibit L.]*

The complainants further aver that as early as the 1st of May, 1813, Robert S. Bickley claimed, by his deed of that date, to have bought from Brent, trustee, all of Blodget's title to the premises in question; and from that time onward every mesne conveyance purports to convey a fee simple title.

[*Words and figures enclosed in brackets on margin in copy.]

While the bill filed in the Bickley Chancery suit avers that the leases executed by said Blodget to said Dougherty and to said Frethy were void, because executed subsequent to the deed of trust aforesaid to Johnson and Peter, the decree, nevertheless, recognized them as existing, and, as is hereinbefore averred decrees a sale of the "ground rents."

The last reference of record in relation to this lease, with respect to Parcel "A," is contained in the deed from Bickley to Dougherty, dated May 1st, 1813, and granting, in the language already quoted, a fee simple title to Dougherty, the former tenant, and the complainants aver that from the time said Isherwood bought said
12 Parcel "A," on September 25th, 1852, down to the time of the filing of the ejectment suit aforesaid, no adverse claim had been made to Parcel "A" by anyone; and that said Isherwood and his said grantee, Willard, exercised all acts of ownership with respect thereto, paying taxes thereon, repairs to the buildings thereon, and collecting all rents therefrom.

[Recorded June 6 1807, Liber S No. 18, f. 1.—Exhibit H.]*
[Lease, Blodget to Frethy, Oct. 7, 1801, Liber G. No. 17, fol. 299.—Exhibit A 4.]*
[Rec. Oct. 7, 1801, in Liber G, f. 301.—Ex. R.]*
[Rec. May 9, 1803, Liber I 9, f. 325.—Ex. S.]*
[Rec. Feb. 15", 1804, Liber K 10, f. 204.—Exhibit T.]*

And the complainants further aver that, with respect to Parcel "B," on the 15th of January, 1807, Brent, trustee, and Thomas Peter, surviving trustee, conveyed the "ground rents" of said Parcel "B," reserved under the lease from Blodget to Frethy, to one Robert F. Howe. Said Frethy made an assignment of his said leasehold interest on the 19th of September, 1801, to one Frederick Betz. On the 24th of January, 1803, said Frederick Betz assigned the same to one George Betz. On the 15th of February, 1804, said George Betz assigned the same to one John Thorpe.

This appears to end, so far as the Land Records show, the direct title to the lessee under Blodget's lease of Parcel "B."

[Rec. Feb. 8", 1831, Liber W. B. 1, f. 144.—Exhibit U.]*

On the 17th of August, 1830, the corporation of Washington conveyed said Parcel in fee simple to one William Dowling, reciting the non-payment of taxes upon Parcel "B" assessed in the name of Robert F. Howe.

[Rec. May 30", 1831, Liber W. B. 36, f. 299.—Exhibit V.]*

On the 30th of May, 1831, William Dowling conveyed in
13 fee simple to Robert F. Howe, reserving his leasehold interest in said parcel. There is no more specific description of the leasehold interest referred to by these words.

[*Words and figures enclosed in brackets on margin in copy.]

[Rec. Oct. 16", 1835, Liber W. B. 56, f. 449.—Exhibit W.]*
[Will of Howe, Rec. Reg. Wills D. C., Book 21, f. 8.—Exhibit X.]*

On the 18th of July, 1835, Sarah Howe and Edward P. Pearson, Executors of said Robert F. Howe, conveyed to William Dowling, reciting that Robert F. Howe died seized of Parcel "B," conveyed to him by deed dated January 15th, 1807, which lot, at the time of making the said deed, was subject to a lease for 99 years, dated April 4th, 1801; and that said Howe left a last will dated July 28th, 1830, whereby he authorized his Executors to sell and dispose of all his estate, real and personal, to pay debts and legacies. Said will was duly probated and admitted to record; and by said will the grantors and one, Thomas G. Howe, were appointed Executors, but Thomas G. Howe renounced. The grantors, as Executors, sold at auction, November 1st, 1834, the premises above mentioned, the grantee being then in possession of said premises under said lease, for the sum of Four Hundred and Eighty (480) Dollars, which he had fully paid; and the grantors, as Executors, conveyed to the grantee and his heirs, all the right, title, interest and estate, etc., which said testator had in the premises at and before his decease.

This is the last mention of record of said lease to Parcel "B."

[Wills 7, folio 11.—Exhibit Y.]*

William Dowling, by his will, probated October 23, 1852, conveyed all of his estate to his son, William, for life, "and after the death of my said son, William, then I give and bequeath the
14 same, and every part thereof, to his heirs at law forever."

[Rec. June 15", 1863, Liber W. C. F. 7, f. 1.—Exhibit Z.]*

On the 13th of January, 1863, Richard Reeder, guardian of Frances M. and Mary G. Dowling, leased this parcel to Castalio Hosmer for three years.

[Rec. Oct. 28", 1865, Liber R. M. H. 3, f. 350.—Exhibit A 1.]*

On September 11th, 1865, Frances M. Dowling and Mary G. Dowling conveyed, as heirs of William Dowling, Sr., and of William Dowling, Jr., to John F. Ennis, trustee.

[Equity No. 455, Doc. 7.—Exhibit A5, Exhibit A6.]*

On June 22nd, 1865, a bill in Equity was filed in the Supreme Court of the District of Columbia by Francis M. Dowling against Mary G. Dowling, under which, on the 5th of July, 1865, John F. Ennis was appointed trustee to sell.

[Rec. May 11", 1866, Liber R. M. H. 10, f. 442.—Exhibit A2.]*

On the 11th of May, 1866, John F. Ennis, trustee, conveyed said Parcel "B" to said Benjamin F. Isherwood in fee.

[*Words and figures enclosed in brackets on margin in copy.]

[Rec. Jan. 31st, 1883, Liber 1028, f. 381.—Exhibit Q.]*

Benjamin F. Isherwood, as has been hereinbefore averred, conveyed said Parcel "B" to said Caleb C. Willard, in fee, on May 4th, 1882.

[Rec. May 30, 1831, Liber W. B. 36, f. 299.—Exhibit V.]*

And the complainants aver that the said Howe was, prior to the year 1830, assessed by the municipal authorities of the City of Washington as the owner of Parcel "B," and, therefore, liable for the taxes thereof; and, the deed aforesaid from the corporation to said Dowling purports to convey a fee simple title. This title said Dowling by his said deed of May 30th, 1831, conveyed to Howe, specially reserving the title which he, Dowling, had as tenant of the leasehold interest.

[Rec. Oct. 16", 1835, Liber W. B. 56, f. 449.—Exhibit W.]*

15 By the said deed of July 18th, 1835, from Howe's Executors to William Dowling he (Dowling) assumed to acquire the fee simple title to Parcel "B;" and he disposed of the same by his last will, probated October 23rd, 1852.

Seventh. That the said Benjamin F. Isherwood bought the respective parcels as follows:

[Rec. Oct. 9", 1852, Liber J. A. S. 46, fol. 198.—Exhibit P.]*

Parcel "A," from William Redin and George Cover, Trustees, by deed dated September 25th, 1852.

[Rec. May 11, 1866, Liber R. M. H. 10, f. 442.—Exhibit A2.]*

Parcel "B," from John F. Ennis, trustee, by deed dated May 11th, 1866.

[Rec. Nov. 1st, 1852, Liber J. A. S. 47, folio 31.—Exhibit A3.]*

Parcel "C," from the heirs of Abraham Bradley, *et al.*, by deed dated September 21st, 1852.

That these purchases were made by the said Isherwood at public auction, at which a fee simple title was advertised and proclaimed to be sold; that he received fee simple deeds therefor; that he had the title to the same examined by competent lawyers who advised him that he had acquired a good fee simple title to the said Parcels by his said deeds hereinbefore referred to. That from the dates of said purchases down to the date of his sales to the said Willard, as hereinbefore and hereafter set forth, he, the said Isherwood, claimed as against the whole world to own the same in fee simple; that he collected for his own benefit rents during all that time from houses

[*Words and figures enclosed in brackets on margin in copy.]

which were upon the said lot, made and paid for repairs upon the same and paid all taxes and charges thereon; and further on
16 the 16th day of August, 1873, he made and recorded with the surveyor of the District of Columbia, a subdivision of said lot twenty (20) into Sub-lots twenty-eight (28) and twenty-nine (29).

[Rec. surveyor's office D. C., Liber H. D. C., f. 232.]*
[Rec. Jan. 31st, 1883, Liber 1028, f. 381.]*

Eighth. That the said Willard bought all of the said Parcels, being the whole of said original lot numbered twenty (20), then designated as Sub-lots twenty-eight (28) and twenty-nine (29), as aforesaid, from the said Isherwood and received a fee simple deed therefor from him on the 4th day of May, 1882; that he had the title to the said lot examined by The Real Estate Title Insurance Company of the District of Columbia, which reported the same good in fee simple in the said Isherwood. That thereupon and in the year 1882 the said Willard entered upon the possession of the said lots claiming as against the whole world a fee simple title thereto under the said deed; that up to the time of his death he occupied the same and every part thereof under said claim of title, and collected for his own benefit rents from the houses which were and are thereon, and paid all repairs upon the same, and also paid all taxes and charges thereon down to the time of his death. That since his said death the complainants have succeeded to his said possession and title and have collected rents, paid repairs and have acted generally as the owners in fee simple of said lots. Said deed to Willard and each of the deeds mentioned in Paragraphs Six and Seven of this bill were duly recorded among the Land Records of the District of Columbia.

Ninth. That in the year 1896 the said Willard erected im-
17 provements upon the rear part of said lots of the following dimensions, to wit, a three story and attic building thirty-four and one-half (34½) feet long by thirty-three (33) feet wide, and at a large cost, which improvements remain up to this date, yielding rent to the complainants.

Tenth. That the said Willard had no notice or knowledge of any claim on the part of the defendant or of any other person or persons adverse to him prior to the institution of the said ejectment cases on the 8th day of October, 1903, as aforesaid.

Eleventh. That what is known as the Blodget Claim has been notorious in this District for upwards of thirty years. That beginning in June 1873, certain persons claiming to be the heirs at law of said Samuel Blodget, Jr., began filing in the Office of the Recorder of Deeds for this District, agreements with so called agents relative to all the real estate which was of said Samuel Blodget in his life time, looking to the recovery of said real estate, the same being the real estate sold in said Chancery Cause No. 8, following the same on said Land Records with various agreements, deeds, assignments,

[*Words and figures enclosed in brackets on margin in copy.]

deeds in trust etc., bringing ejectment suits and dismissing them before trial, thereby placing clouds of record on large quantities of real estate in this District in the possession of *bona fide* purchasers for value; the object of all which was to intimidate timid owners and extort money for quitclaim deeds.

The title companies and examiners of title in reporting upon the title to any piece of real estate passing under said Chancery
18 Cause No. 8 would state upon such report "this lot is within the Blodget claim, which is considered to be worthless" or words to the same effect.

Finally one ejectment suit was brought to trial, resulting in a verdict for the defendant, and the judgment on verdict affirmed by the Court of Appeals, it being the case of Johnson *vs.* Van Wyck, 4 Apps. D. C., 294 to 328, in which the Court held the deed to Johnson, the plaintiff in ejectment, void as against public policy and champertous. It was under an intimation in the opinion in that case that said Blodget claimants undertook to withdraw from that deed and to reconvey to said Johnson upon certain trusts freed from the taint of champerty, and it is under that deed that the defendant Camp claims title.

A reference to the report of said case in the Court of Appeals, D. C., will show in a general way the kind and character of many of the agreements, deeds, etc., so put upon the Land Records.

Twelfth. That the complainants upon information and belief aver that the said defendant Camp claims that he is the assignee of the heirs at law of the said Blodget; that after the execution of the said leases there remained in said Blodget and his heirs a reversion in fee in and to the said lot numbered twenty; that only a rent charge passed under and by the said proceeding in said Equity case of Bickley *vs.* Blodget; that as the said leases have expired without purchase by the lessees the reversion comes into possession, and that he therefore as plaintiff in ejectment has the right to recover possession and title in fee simple of said lot numbered twenty.

19 Thirteenth. That, on the other hand, the complainants contend:

1. That the defendant cannot recover in any event as to Parcel "C," inasmuch as a fee simple title thereto undisputably passed under the aforesaid supplemental decree in the said case of Bickley *vs.* Blodget.

2. That under the Law a fee simple title passed in the original decree in said cause under the term "ground rents."

3. That in any event by the sale of said "ground rents" the right to receive the rents of the said lot numbered twenty passed absolutely to the purchaser and that there only remained in the said Blodget and his heirs a mere naked reversion, without beneficial estate.

4. That in any event the purchase by the lessees of the rent charge merged the whole beneficial and equitable estate in the grantors of the complainants, and that therefore the equitable title to the said premises is vested in the complainants.

5. That the acts of the parties claiming title successively to the

said lot show conclusively that it was the intention of said parties to deal with a fee simple title and that they supposed that they had done so.

Fourteenth. That while the complainants believe that they have a good defense at Law against the said ejectment nevertheless their legal remedy is not as full, adequate and complete as is their remedy in equity, for the following reasons:

20 1. The plaintiff in ejectment can take a nonsuit and possibly acquire the naked legal title and harass the complainants with repeated actions of ejectment.

2. It may be claimed, and, as complainants aver on information and belief, is in fact claimed by the defendant that the words "ground rents" do not import in Law a fee simple title. If this claim be well founded then these complainants might be exposed to great delay and expense in resisting said ejectment or ejectments and yet in the end be compelled to resort to this Court to protect their equitable title.

3. These complainants are advised by counsel that the lessees under said leases had the right at any time during the pendency of the said leases to acquire the reversion in fee by the following money payments to the holders of the reversion, to wit:

Parcel "A"	$500.00
Parcel "B"	$500.00
Parcel "C"	$500.00

Inasmuch as the right to receive rents in perpetuity was sold under said bills and decrees in equity, there remained nothing in the lessor or his heirs save the mere possibility of naked reversion upon the termination of said leases without the exercise of the rights of purchase. If the said right had been exercised, the reversion would have remained naked, and the renewal would have been of no pecuniary benefit to the defendant nor would he have been entitled to the said sums of money for said renewals, for the

21 reason that the rents reserved were the consideration moving for said renewals and they belonged to the grantors of the complainants and not to the defendant or to his grantors, and moreover the said leases as to Parcels "A" and "B" were merged when as hereinbefore stated they were bought by the grantee's purchasers under said decree in equity.

And the complainants aver in this connection that they have been guilty of no laches in the premises. When their grantor, the said testator Caleb C. Willard first learned of the claim of the said defendant, he was in a bad state of health, suffering from a chronic disease which caused his death. He had never had any notice or even suspicion that there was any defect in his title. It was difficult for him to find his papers including the abstracts of title on the faith of which he had bought the lot in question. It was not until the summer of the year 1905 that he was able to learn the residence of the said Benjamin F. Isherwood from whom he bought and whose deposition in the said ejectment cause he took in June

1905. That it was not until November 1905 that the complainants were enabled to get from the City of Baltimore, in which the system of "ground rents" has for a long time obtained, information as to the customs there in existence for more than a century as to the legal status of said ground rents, and the interpretation of said phrase among persons therewith conversant. After the said Willard's death his devisees, the complainants, have been diligent in following up the sources of information which had come to his knowledge. Wherefore the complainants aver, upon the
22 advice of counsel, that they have the right to a renewal of the said leases (in case the Court should be of the opinion that a fee simple title did not pass under a sale of the "ground rents," or that the said leases have not merged as hereinbefore set forth) upon the payment of such nominal sum as the Court shall find the original lessor or his heirs entitled to for a renewal of said leases in the existing situation, in which they have no beneficial interest in said lots.

Wherefore, the premises considered, the complainants pray:

1. That your Honors will grant unto them the United States Writ of Subpœna to be directed to the said defendant, commanding him to appear herein and answer the exigencies of this bill of complaint, and will also enjoin the defendant, his agents and attorneys *pendente lite* from proceeding with the aforesaid ejectment suit now pending in this Court.

2. That if your Honors shall be of the opinion that under the mesne conveyances and proceedings hereinbefore set forth, the complainants have derived and are now vested with all the right, title and interest which the said Samuel Blodget had to the lot in question, then that your Honors will grant unto the complainants the United States Writ of Injunction, enjoining the said defendant, his attorneys and agents, from further prosecuting the said ejectment cause now pending in the Supreme Court of the District of Columbia and hereinbefore specifically referred to; and will further enjoin the said defendant, his attorneys and agents, from instituting
23 in the Supreme Court of the District of Columbia or elsewhere, any further or other actions of ejectment or other proceedings tending to harass and disturb the complainants in the possession of the said premises and tending further to cast a cloud upon their title to the same.

3. If, however, your Honors should be of the opinion that the complainants did not derive through said mesne conveyances and proceedings hereinbefore set forth and are not now possessed through the same with all the right, title and interest to the estate which the said Blodget owned in the said lot, and should further be of the opinion that the defendant is vested with the reversion in fee as assignee of the heirs of the said Blodget, then that your Honors will decree that the said defendant renew the said leases to the complainants for a period of ninety-nine years, renewable forever, and that the Court will further determine what, if any, sums should be paid to the said defendant as a condition to the conveyance by him to the complainants of the naked reversion, which he, the said defendant,

would upon that supposition hold in the premises in question. And that your Honors will upon the payment to him by the complainants of such sums, decree that he forthwith convey to the complainants such interest in reversion.

4. That your Honors will grant unto the complainants such other and further relief as the nature of their case may require and as unto the Court may seem meet.

The defendant to this bill is, Joseph Parker Camp.

KATE WILLARD BOYD.
HENRY K. WILLARD.
GEORGE E. HOWE.

WM. F. MATTINGLY,
R. ROSS PERRY & SON,
JOHN B. LARNER,
Solicitors for Compl'ts.

24 George E. Howe and Henry K. Willard being first duly sworn depose and say that they have read the foregoing bill of complaint by them subscribed and know the contents thereof; that the facts therein stated upon their personal knowledge are true and as to those stated upon information and belief they believe them to be true.

HENRY K. WILLARD.
GEORGE E. HOWE.

Subscribed and sworn to before me this 19th day of January 1906.

[SEAL.] ZINA H. ALLBEE,
Notary Public.

Kate Willard Boyd being first duly sworn deposes and says that she has read the foregoing bill of complaint by her subscribed and knows the contents thereof; that the facts therein stated upon her personal knowledge are true and as to those stated upon information and belief she believes them to be true.

KATE WILLARD BOYD.

Subscribed and sworn to before me this 20th day of January 1906.

[SEAL.] CHARLES L. KNIGHT,
Notary Public.

25 EXHIBIT "A."

Summons.

Filed January 22, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 26756.

JOSEPH PARKER CAMP, Plaintiff,
vs.
CALEB C. WILLARD, Defendant.

The President of the United States to the Defendant, Greeting:

You are hereby Summoned to appear in this Court on or before the twentieth day, exclusive of Sundays and legal holidays, after the day of service of this Writ upon you, to answer the Plaintiff's Suit, and show why he should not have judgment against you for the cause of action stated in his declaration; and in case of your failure so to appear and answer, judgment will be given against you by default.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, the 12th day of February, A. D. 1904.

[SEAL.] J. R. YOUNG, *Clerk*,
By WM. E. WILLIAMS,
Assistant Clerk.

26 *Declaration, &c.*

In the Supreme Court of the District of Columbia.

At Law. No. 46756.

JOSEPH PARKER CAMP, Plaintiff,
vs.
CALEB C. WILLARD, Defendant.

The plaintiff, Joseph Parker Camp, sues the defendant, Caleb C. Willard, to recover the following described real estate, to wit: original lot numbered twenty in square numbered two hundred and fifty-four, in the city of Washington, in the District of Columbia, as the same is laid down on the ground plan or map of said city, and all the rights, easements, privileges, improvements, and appurtenances unto the same belonging or in anywise appertaining, in which the said plaintiff claims the whole right, title, and interest in fee simple, and of which the plaintiff was heretofore, to wit, on the sixteenth day of April, A. D. 1900, lawfully possessed when the said defendant entered the same and unlawfully ejected the said plaintiff

therefrom, and which the said defendant now unjustly and unlawfully detains from the said plaintiff; and the said plaintiff claims the possession of the said lots and the improvements and appurtenances thereto, besides the costs of this suit.

And the plaintiff, Joseph Parker Camp, sues the defendant, Caleb C. Willard, to recover the mesne profits payable by the said defendant to the said plaintiff for that heretofore, to wit, on the
27 sixteenth day of April, A. D. 1900, the said plaintiff was lawfully possessed of the following real estate, to wit: original lot numbered twenty in square numbered two hundred and fifty-four, in the City of Washington, District of Columbia, as the same is laid down on the ground plan or map of said city, and all the rights, easements, privileges, improvements, and appurtenances unto the same belonging or in anywise appertaining, in which said real estate the said plaintiff claims all the right, title, and interest in fee simple, when the said defendant entered the same and unlawfully ejected the said plaintiff therefrom and unlawfully detained and still does detain the same from the said plaintiff, and while so unlawfully possessing and detaining the said real estate and improvements and appurtenances thereto the said defendant has used and occupied and still continues to use and occupy the same, and has taken and received and still takes and receives the rents, issues and profits accruing therefrom to the damage of the said plaintiff of fifty thousand dollars; and the said plaintiff claims the sum of fifty thousand dollars, mesne profits, with interest thereon at the rate of six per centum per annum until paid from the sixteenth day of April, A. D. 1900, besides the costs of this suit.

(Signed) WALTER D. DAVIDGE,
(Signed) WM. E. AMBROSE,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

[SEAL.] (Signed) WALTER D. DAVIDGE,
(Signed) WM. E. AMBROSE,
Attorneys for Plaintiff.

True copy.

J. R. YOUNG, *Clerk,*
By ALF. G. BUHRMAN, *Ass't Cl'k.*

28 EXHIBIT "B."

Filed January 22, 1906.

Liber G. No. 7, folio 316 *et seq.*

Samuel Blodget
to
James Daugherty.

At the request of James Daugherty the following Deed was recorded the twentieth day *day* of October eighteen hundred and one, to wit:

This indenture made the thirteenth day of April in the year of our Lord one thousand eight hundred and one Between Samuel Blodget of Philadelphia State of Pennsylvania of the one part and James Daugherty of the City of Washington in the Territory of Columbia of the other part witnesseth that the said Samuel Blodget for and in consideration of the payment of the rent and performance of the Covenants hereinafter mentioned on the part of the said James Daugherty his executors administrators and assigns to be paid and performed Hath demised granted leased and to farm let*t* and by these presents Doth demise grant lease and to farm let*t* unto the said James Daugherty his executors administrators and assigns. All that Lot*t* of twenty feet front on F Street in Lot*t* number twenty in square number two hundred and fifty four in the City of Washington aforesaid Together with all improvements, alleys, ways water & water courses privileges, easements and emoluments belonging or appertaining to said Lot*t*. To have and to hold said lot*t* of ground with the appurtenances unto the said James Daugherty his executors administrators and assigns from this the thirteenth day of April above mentioned for and during and unto the full term of Ninety nine years from thence next ensuing and fully to be compleated and ended yielding and paying therefor yearly and every year
29 during said term unto the said Samuel Blodget his heirs and assigns the yearly rent or sum — forty dollars current money of the United States free and clear of all taxes assessments or public dues nor or hereafter to be laid taxe- or assessed on sd. demised premises in annual payments on the said thirteenth day of April in each and every year — the said term of ninety nine years to be renewable forever. Provided always and it is the true intent and meaning of these presents that if it shall happen that if the said yearly rent shall be in arrear and unpaid by the space of forty days next after the time on which the same is above reserved to be paid, then it shall and may be lawful to and for the said Samuel Blodget his heirs or assigns unto the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess occupy and enjoy as in his or their former

estate until all such arrearages of rent with legal interest thereof and all and every cost charge and expenses incurred by the said Samuel Blodget his heirs or assigns by reason of the non-payment of said rent shall be fully satisfied and paid or make distress therefor at his or their option and also if the said yearly rent Shall be in arrear and unpaid by the space of sixty days next after the time on which the same is above reserved to be paid then it may be lawful to and for the said Samuel Blodget his heirs and assigns unto the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess occupy and enjoy as in his or their former estate and that then in such case this Indenture and every clause matter and thing therein contained shall from henceforth be utterly void and of no effect and the said
30 James Daugherty for himself his executors administrators and assigns doth covenant and agree to and with the said Samuel Blodget his heirs and assigns well and truly to pay the above reserved yearly rent or sum of forty dollars at the time before within mentioned and also that he the said James Daugherty his executors administrators and assigns shall and will erect and build a good and substantial dwelling house to be compleated and tenantable in the course of the present year at farthest which if not complied with he the said James Daugherty binds himself his heirs executors and administrators to satisfy and pay unto the said Samuel Blodget his heirs and assigns the damages which shall or may accrue to him or them for such compliance and moreover in case of a defalcation shall be made in payment of the rent as above mentioned then and in such case the improvements which shall be made on the above demised premises shall belong unto the said Samuel Blodget his heirs and assigns—and the said Samuel Blodget for himself his heirs and assigns doth covenant promise and agree to and with the said James Daugherty his heirs executors administrators and assigns that he the said James Daugherty his heirs or assigns at any time or times during the continuances of this present or future demise on the request and at the proper costs and charges of the said James Daugherty his heirs, or assigns and on his or their payment or tending in payment to the said Samuel Blodget his heirs or assigns the principal sum of five hundred dollars shall and will make and execute a deed in fee simple for said Lott and premises above demised to the said James Daugherty his
31 heirs and assigns forever with such clause of General Warrantee as he or they may require It is further agreed that the said James Daugherty his heirs or assigns may pay unto the said Samuel Blodget his heirs or assigns any proportion of the principal of five hundred dollars not less than one tenth of that sum and so much of the principal as shall be paid so much in proportion of the rent shall be lessened reserving unto the said Blodget his heirs or assigns all penalties and forf-itures within before mentioned until the whole sum of five hundred dollars, is paid when the whole rent shall cease In witness whereof the said parties have hereunto in-

terchangeably set their hands and seals the day and year first above written.

SAM BLODGET. [SEAL.]
JAMES DAUGHERTY. [SEAL.]

Signed, sealed and delivered in the presence of—
JNO. SITCKNEY.
EDWD. FRETHY.

TERRITORY OF COLUMBIA,
Washington County:

Personally appeared before the Subscriber one of the Commissioners of the City of Washington appointed by the President of the United States by virtue of an Act of Congress for establishing the temporary and permanent seat of the Government of the United States the within named Samuel Blodget & James Daugherty and acknowledged the foregoing to be their act and deed, and delivered for the uses and purposes therein mentioned. Acknowledged this 14th day of April 1801.

WILLIAM THORNTON.

32 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber G. No. 7 fol. 316 *et seq.* one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 15th day of January, A. D. 1906.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

33 EXHIBIT "C."

Filed January 22, 1906.

Liber G. No. 7, folio 299 *et seq.*

Samuel Blodget
to
Edward Frethey.

At the request of Edward Frethey the following Deed was recorded the Seventh day of October eighteen hundred and one to wit:

This indenture made the fourteenth day of April in the year of our Lord one thousand eight hundred and one, Between Samuel Blodget of Philadelphia and State of Pennsylvania of the one part and Edward Frethy of the City of Washington in the Territory of Columbia of the other part witnesseth that the said Samuel Blodget

for and in consideration of the payment of the rent and performance of the Covenants herein after mentioned on the part of the said Edward Frethy his executors administrators and assigns to be paid and performed Hath devised granted leased and to farm let. and by these presents Doth demise grant lease and to farm let unto the said Edward Frethy his executors administrators and assigns All that lot of nineteen feet eleven inches and a half West front on F Street north running in depth one hundred & fifty nine feet to an alley. which lot is part of Lot Number Twenty in square No. Two hundred and fifty four in the City of Washington. Together with all improvements and alleys ways or privileges belonging to said Lott of ground unto the said Edward Frethy his executors administrators and assigns from this the fourteenth day of April above mentioned for and during the full Term of ninety nine years from thence next ensuing and fully to be completed and ended
34 yielding and paying therefor yearly and every year during the said term unto the said Samuel Blodget his heirs and assigns the yearly rent or sum of forty dollars current money of the United States free and clear of all taxes assessments or public dues now or hereafter to be paid taxed or assessed on said demised premises in annual payments on said fourteenth day of April on each and every year the said term of ninety nine years to be renewable forever. provided always and it is the true intent and meaning of these presents that if it shall happen that if the said yearly rent shall be in arrear and unpaid by the space of Forty days next after the times on which the same is above reserved to be paid then it shall and may be lawful to and for the said Samuel Blodget his heirs or assigns unto the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess occupy and enjoy as in his — their former estate until all such arrearages of rent with legal interest thereof and all and every Cost charge and expences incurred by the said Samuel Blodget his heirs or assigns by reason of the non-payment of said rent shall be fully satisfied and paid or make distress thereof at his or their option and also if the said yearly rent shall be in arrear and unpaid by the space of Sixty days next after the time on which the same is above reserved to be paid then it may be lawful to and for the said Samuel Blodget his heirs and assigns unto the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess occupy and enjoy as in his or their former estate and then in such case this Indenture and every clause
35 matter and thing contained shall from henceforth be utterly void and of no effect and the said Edward Frethy for himself his executors administrators and assigns doth covenant and agree to and with the said Samuel Blodget his heirs and assigns well and truly to pay the within mentioned reserved yearly rent of forty dollars at any time before within mentioned and also that he the said Edward Frethey his executors administrators and assigns shall and will erect or cause to be erected a good building of at least twelve feet square to be completed and tenantable within the pres-

ent year at farthest which if not complied with he the said Edward Frethy binds himself his heirs executors and administrators to satisfy and pay unto the said Samuel Blodget his heirs and assigns the damages which shall or may accrue to him or them for such non-compliance and moreover in case *of* a defalcation shall be made in payment of the rent as before within mentioned then and in such case the improvements which shall be made on the above demised premises shall belong to the said Samuel Blodget for himself his heirs and assigns and the said Samuel Blodget for himself his heirs and assigns doth covenant promise and agree to and with the said Edward Frethy his heirs executors administrators and assigns that he the said Edward Frethy his heirs or assigns at any time or times during the Continuance of this present or *futer* demise or at the request and at the proper costs and charges of the said Edward Frethy his heirs or assigns and on his or their tending in payment of the said Samuel Blodget his heirs or assigns the principal sum of five hundred dollars shall and will make — execute a deed in fee simple for said Lot*t* and premises within described to
36 the said Edward Frethy his heirs and assigns forever. with clauses of general Warrant*ee* as he or they may judge requisite It is further agreed that the said Edward Frethy his heirs or assigns may pay unto the said Samuel Blodget his heirs or assigns any proportion of the principal sum of five hundred dollars not less than one twentieth of that sum and for so much of the principal of five hundred dollars as shall be paid so much in proportion of the rent shall be reduced or lessened reserving unto the said Samuel Blodget his heirs or assigns all penalties and forfeitures within before mentioned until the whole sum of the five hundred is paid when the whole rent shall cease and the property become the sole right of the said Edward Frethy his heirs or assigns. In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year within mentioned.

SAM BLODGET. [SEAL.]
EDW'D FRETHY. [SEAL.]

Signed, sealed and delivered in the presence of
JOHN STICKNEY.
JAMES DAUGHERTY.

TERRITORY OF COLUMBIA,
Washington County:

Personally appeared before the Subscriber one of the Commissioners of the City of Washington appointed by the President of the United States by virtue of an act of Congress for establishing the temporary & permanent seat of the Government of the
37 United States the within named Samuel Blodget and Edward Frethy and acknowledged the foregoing Instrument to be their Act & deed and delivered for the uses & purposes therein mentioned Acknowledged this 14th day of April 1801.

WILLIAM THORNTON.

OFFICE OF THE RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber G. No. 7 Fol. 299 *et seq.* one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 15th day of January, A. D. 1906.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

38 EXHIBIT "D."

Filed January 22, 1906.

Liber K. No. 10, folio 317 *et seq.*

Samuel Blodget
to
Edward Fennell.

At the Request of Edward Fennell the following Lease was Recorded the thirtieth day of April Eighteen hundred and four:

This indenture made the 20th day of April in the year of our Lord one thousand Eight hundred and four between Samuel Blodget of the City of Washington in the Territory of Columbia of the one part and Edward Fennell of the same place of the other part Whereas by a certain Indenture bearing date the fifteenth day of April in the year one thousand Eight hundred and one the said Samuel Blodget did Demise grant Lease and to farm let unto the said Edward Fennell his heirs Executors administrators and assigns all that lot of ground of eleven feet eleven inches more or less front on F Street North extending in de*b*th one hundred and fifty nine feet to an alley, the same being more or less which Lot is part of one numbered twenty in Square numbered two hundred and fifty four in the City of Washington together with all improvements alleys and privileges thereto belonging for a term of ninety nine years renewable forever at or under the yearly rent of twenty four Dollars, payable to the said Samuel Blodget his heirs or assigns subject to the covenants and agreements thereinafter contained as by said Indenture reference bearing thereto had may appear and whereas owing to some omission or neglect the said indenture hath not been acknowledged or Recorded in pursuance — the act in such case made and provided
39 but the said parties are still desirous to carry the same into effect now therefore this indenture witnesseth that the said Samuel Blodget for the Considerations hereinafter mentioned hath demised granted lease- and to farm Let and by these presents doth demise grant lease and to farm let unto the said Edward Fennell his executors administrators and assigns all *that* the above described part of a Lot of ground together with the improvements thereon erected and the benefits and advantages thereof to have and to hold the said

part of a Lot of ground and premises with the appurtenances .....unto the said Edward Fennell his Executors administrators and assigns from the said sixteenth day of April one thousand Eight hundred and one *from* thence forth for and during and unto the full and — term of ninety nine years and fully to be completed and ended yielding and paying therefor yearly and every year during the said term unto the said Samuel Blodget his heirs or assigns the yearly rent or sum of twenty four Dollars current money of the United States free and clear of all taxes assessments or public dues now or hereafter to be laid taxed or assessed on said Demised premises in each and every year the like term of ninety nine years to be renewable therafter forever under and Subject to the Rent covenants and agreements aforesaid provided always that if it shall happen that the said Rent shall be in arrear and unpaid for the space of forty days next after the time on which it is reserved to be paid the same being first lawfully demanded it shall and may be lawful for the said Samuel Blodget his heirs or assigns unto the said premises to re-enter and the same to have again repossess occupy and enjoy as in his or their former estate until such rent and all
40 costs charges damages and expenses incurred by the said Samuel Blodget his heirs or assigns by reason of the non-payment of said Rent shall be fully satisfied and paid or make distress therefor at his or their option and the said Edward Fennell for himself his heirs executors and administrators doth covenant and agree to and with the said Samuel Blodget his heirs and assigns that he the said Edward Fennell shall and will well and truly pay the said sum of twenty four dollars on half yearly payments to the said Samuel Blodget his heirs Executors administrators and assigns and the said Samuel Blodget for himself his heirs executors and administrators doth hereby covenant and agree to and with the said Edward Fennell his heirs executors administrators or assigns that he the said Samuel Blodget his heirs or assigns shall and will at any time during the present or future demise and at the request costs and charges of the said Edward Fennell his heirs executors administrators or assigns make and execute a Deed in fee simple clear of incumbrances for said lot and premises above described unto the said Edward Fennell his heirs and assigns or his or their paying to the said Samuel Blodget his heirs or assigns the principal sum of three hundred dollars which deed shall contain a clause of general Warranty and other fitting and usual covenants. In witness whereof the said parties have hereunto interchangeably their hands and seals Subscribed & set the day and year first above written.

SAM BLODGET. [SEAL.]
EDWD. FENNELL. [SEAL.]

Signed, sealed and delivered in the presence of—
THOMAS MUNROE.

41 DISTRICT OF COLUMBIA, *ss:*

On the 20th day of April one thousand Eight hundred and four Before me the subscriber Superintendent of the City of Washington

personally appeared Samuel Blodget and Edward Fennell parties to the within Instrument and severally acknowledged the same to be their act and deed according to the true intent and meaning thereof.

THOMAS MUNROE.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber K. No. 10, fol. 317 *et seq.* one of the Land Records of the District of Columbia.

In testimony wherof I have hereunto set my hand and affixed the seal of this office this 15th day of January, A. D. 1906.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

42 EXHIBIT "E."

Filed January 22, 1906.

Liber B No. 2, folio 9 *et seq.*

At the request of Tho. Johnson Jur. & Ths. Peter this Deed was recorded the 23d April 1794.

This indenture made the twenty eighth day of January seventeen hundred and ninety four Between Samuel Blodget, Jun., of the one part and Thomas Johnson Junior and Thomas Peter of the other part witnesseth that the said Samuel Blodget for securing the payment of the prizes and all sums of money with which he may be chargeable or in any manner liable for or on account of the Lottery now drawing in George Town commonly called the Hotel Lottery and for the indemnity of Thomas Johnson Davis Stuart, and Daniel Carroll commissioners appointed in virtue of the Act of Congress for establishing the temporary and permanent seat of the government of the United States their successors heirs Executors and administrators from and against all costs, damages and charges on account of the said Lottery by occasion or through any act or transaction of him the said Samuel Blodget or any agent or person employed by him, and in consideration of the sum of five shillings current money to him the said Samuel Blodget in hand paid the receipt whereof he doth hereby acknowledge, hath given granted bargained sold aliened assigned and transferred and by these presents doth give grant, bargain, sell, alien assign and transfer to them the said Thomas Johnson Junior and Thomas Peter their heirs

43 Executors administrators and assigns all the lands and real Estate and property of him the said Samuel Blodget situate and being within the Territory of Columbia with their and each and every of their rights, members and appurtenances and all the Estate, right Title use trust, claim and demand in Law and Equity of him the said Samuel Blodget of in and to the said Lands

and real estate and all Lands and real Estate within the said Territory of Columbia and also all his the said Samuel Blodget's seven thousand one hundred and sixty shares of — in the stock in the insurance company of North America Certificates of which are numbered and are for the shares as follows to wit number twenty seven for five hundred shares number forty three for nine hundred and sixty two, number thirty five for four thousand two hundred & sixty number thirty three for one thousand and number forty two for four hundred and thirty eight, to have and to hold the said Lands and other premises to the said Thomas Johnson Junior and Thomas Peters the- heirs Executors, administrators and assigns to the only proper use and behoof of them the said Thomas Johnson Junior and Thomas Peter their heirs Executors administrators and assigns forever and for no other use intent or purpose whatsoever. And he the said Samuel Blodget doth hereby name and appoint Clement Biddle and Ebenezer Hazard of the City of Philadelphia his true and lawful attornies jointly and each of them his true and lawful attorney severally for him and in his name and as his attornies or attorney to transfer and do all lawful act and acts necessary for the effectual transfer of all the said Stock and shares in the books of the said Insurance Company to the said Thomas Johnson Junior and Thomas Peter or the survivors or sur-
44 vivor of them, provided always that if the said Samuel Blodget his heirs Executors or administrators do and shall well and truly pay all prizes and sums of money with which he is or may be chargeable or for which he may be liable for or on account of the said Lottery and shall in all things save indemnify and keep harmless the said Thomas Johnson David Stuart and Daniel Carroll their successors heirs Executors and administrators of from and against all suits payments costs damages and charges on account of the said Lottery by occasion or through any act or transaction of him the said Samuel Blodget or any agent or person employed by him then this present Indenture and every clause thereof shall be and become void. In witness whereof the parties to these presents have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

SAM BLODGET. [SEAL.]

Signed, sealed and delivered in the presence of
WILL DEAKINS, JUNR.,
COLLEN WILLIAMSON,
Witness-.

On the back of which Deed was thus Indors*t*- to wit:

January 28, 1794 Received of the within named Thomas Johnson Junior and Thomas Peter the within mentioned sum of Five Shillings.

SAM BLODGET.

Witness-:
WILL DEAKINS, JU".
COLLEN WILLIAMSON.

On the 28" day of January 1794 came before me the subscriber one of the Commissioners appointed by virtue of the act of Congress for establishing the temporary and permanent seat of
45 the government of the United States the within named Samuel Blodget and acknowledged the within Deed to be his act & Deed.

TH. JOHNSON.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber B. No. 2 Fol. 9 *et seq.* one of the Land Records of the District of Columbia.

In witness whereof I have hereunto set my hand and affixed the seal of this office this 15th day of January, A. D. 1906.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

46 *Restraining Order.*

Issued January 22, 1906.

In the Supreme Court of the District of Columbia.

No. 25974, Equity Docket.

KATE WILLARD BOYD ET AL., Complainants,
against
JOSEPH PARKER CAMP, Defendant.

The Defendant and his agents and attorneys are hereby restrained as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 6th day of February, 1906, of which take notice.

By the Court:

THOS. H. ANDERSON, *Justice.*

Marshal's Return.

Served copy of the restraining order in this cause on Wm. E. Ambrose, Jan. 22, 1906. Defendant Joseph Parker Camp not to be found.

Feb. 6, 1906.

AULICK PALMER, *Marshal.*
S.

47 *Order for Appearance of Absent Defendant.*

Filed April 24, 1906.

In the Supreme Court of the District of Columbia.

No. 25974, Equity Docket No. 57.

KATE WILLARD BOYD ET AL.
vs.
JOSEPH PARKER CAMP.

The object of this suit is to quiet the title in the complainants to original lot numbered Twenty (20) in Square numbered Two hundred and fifty-four 254 in the City of Washington, D. C.

On motion of the complainant, it is this 24" day of April, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default, provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter.

By the Court:

HARRY M. CLABAUGH,
Chief Justice.

48 *Proof of Publication.*

Filed May 22, 1906.

In the Supreme Court, District of Columbia, This 18 Day of May, 1906.

Equity No. 25974, Docket No. 57.

KATE WILLARD BOYD ET AL.
v.
JOSEPH PARKER CAMP.

Affidavit.

DISTRICT OF COLUMBIA, *To-wit:*

Personally appeared before me, a Notary Public in and for the said District, M. W. Moore, well known to me to be the Manager of "The Washington Law Reporter," a weekly newspaper printed and published in the City of Washington and District aforesaid, and made oath in due form of law that the annexed notice was published in said weekly newspaper at the times mentioned in the Certificate opposite hereto.

Witness my hand and official seal this 18 day of May 1906.

[SEAL.] ALFRED F. SMITH,
Notary Public, D. C.

49 *Copy of Notice.*

W. F. Mattingly, R. Ross Perry & Son, and John B. Larner, Solicitors.

In the Supreme Court of the District of Columbia.

No. 25974, Equity Docket No. 57.

KATE WILLARD BOYD ET AL.
vs.
JOSEPH PARKER CAMP.

The object of this suit is to quiet the title in the complainants to original lot numbered twenty (20) in square numbered two hundred and fifty-four (254), in the city of Washington, D. C. On motion of the complainants, it is this 24th day of April, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter; otherwise the cause will be proceeded with as in case of default.

By the court:

[SEAL.] HARRY M. CLABAUGH,
Chief Justice.

True copy.
Test:

JOHN R. YOUNG, *Clerk,*
By WMS. F. LEMON, *Ass't Clerk.*

I hereby certify that the foregoing Legal Notice was printed and published in the regular issues of "The Washington Law Reporter," a weekly newspaper, bearing date April 27- May 4-11 1906.

50 M. W. MOORE,
Gen. Manager of The Law Reporter Co. of Washington City.

Affidavit of Thaddeus F. Robbins.

Filed May 29, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased, Complainants,

vs.

JOSEPH PARKER CAMP, Defendant.

Thaddeus F. Robbins being first duly sworn deposes and says that he is employed in the office of John B. Larner, the Solicitor for the

Complainant in the above entitled cause; that on Wednesday the 9th day of May 1906, at the request of the said Larner, he mailed, enclosed in an envelope addressed to the said Joseph Parker Camp, at Lock Box 35, Philadelphia, Pennsylvania, a copy of the notice then appearing in The Washington Law Reporter, requiring the appearance of the non-resident defendant, Joseph Parker Camp; said envelope was mailed in a letter box in the City of Washington, D. C., postage prepaid, on the said 9th day of May 1906.

51 THADDEUS F. ROBBINS.

Subscribed and sworn to before me this 28" day of May 1906.

J. R. YOUNG, *Clk,*
By F. E. CUNNINGHAM,
Ass't Clk.

Motion for Filing of Exhibit.

Filed October 9, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased, Complainants,

vs.

JOSEPH PARKER CAMP, Defendant.

Comes now the defendant in the above entitled cause, by his solicitor, William E. Ambrose, and moves the Court for an order requiring the complainants to file, as a part of their bill of complaint, copies of certain documents and instruments of writing referred to therein as material to the case of complainants, and which are specifically set forth in the schedule hereunto annexed.

And for reason therefor says:

52 1. That the complainants filed with their said bill certain exhibits, being copies of documents and instruments other than those above referred to which they have alleged to be material to their contention and have omitted the above mentioned documents and instruments which are equally germane.

2. In order that the true legal import and bearing of the said documents and instruments may appear to the Court and to the defendant, from their language, and not merely the understanding of complainants, of such import and bearing, which is all that is alleged in said bill with respect to the said documents and instruments.

3. That complainants' bill being predicated upon the said documents and instruments, the same should have been set forth in full

therein, to the end that the defendant might be fully and properly advised as to complainants' case and thereby be enabled to make defense to said bill by way of demurrer, if the case thus stated should be insufficient, which course he would be embarrassed in taking in the present condition of said bill.

4. That the allegations of the bill with reference to said documents and instruments are believed by the defendant to be erroneous, ambiguous and misleading, and that defendant cannot interpose a defense with certainty unless said documents and instruments are fully set forth.

WM. E. AMBROSE,
Solicitor for Defendant.

53 Messrs. John B. Larner, R. Ross Perry and Son, and Wm. F. Mattingly, Solicitors for Complainants:

Please take notice that I shall calendar the above motion for hearing at the next regular motion day of the Equity Court.

WM. E. AMBROSE,
Solicitor for Defendant.

Schedule Referred to in the Foregoing Motion.

1. Record of Division between the United States Commissioners and David Burns concerning parcels of land specified in Complainants' Bill.

2. Bill, Answers and Decree of October 4, 1805, and report of sale of ground rents in Chancery Cause No. 8, Docket No. 1, of the Circuit Court of the District of Columbia in the Cause of Robert S. Bickley *vs.* Samuel Blodget.

3. Instrument purporting to convey ground rent of Parcel "A" to Henry Pratt from Trustee under decree above cited.

4. Instrument purporting to convey ground rent of Parcel "B" to Robert F. Howe from Trustee under decree above cited.

5. Supplemental Bill, filed May 30, 1810, Answers and Decree of November 5, 1813, and report of sale *in re* Robert S. Bickley *vs.* Samuel Blodget *et al.*

6. Instrument purporting to be a conveyance from John Davidson to Charles Glover, dated May 18, 1818.

54 7. Instrument purporting to be a conveyance from Robert S. Bickley to James Dougherty of Parcel "A," dated May 1, 1813.

8. Will of James Dougherty probated July 11, 1826.

9. Will of Mary Dougherty probated August 9, 1830.

10. Bill, Answer and Decree in partition proceedings No. 478, Chancery Rule 4, in the Circuit Court of the District of Columbia.

11. Conveyance of William Redin, Trustee, to John Byrne under report of October 20, 1847, in No. 478, Chancery Rule 4.

12. Instrument purporting to be a Deed of Trust from John Burne to George Cover upon Parcel "A," dated July 30, 1847.

13. Instrument purporting to be a Deed of Trust from John

Byrne to William Redin, Trustee, on Parcel, "A," dated February 19, 1848.

14. Instrument purporting to be a Deed of William Redin and George Cover, Trustees, conveying Parcel "A" to Benjamin F. Isherwood, dated September 25, 1852.

15. Instrument purporting to be a Deed of Benjamin F. Isherwood to Caleb C. Willard, conveying Lot 20, dated May 4, 1882.

16. Assignment of Frethy to Frederick Betz of Parcel "B," bearing date September 19, 1801.

17. Assignment of Frederick Betz to George Betz of Parcel "B," bearing date January 24, 1803.

55 18. Assignment of George Betz to John Thorpe of Parcel "B," bearing date February 15, 1804.

19. Deed of Corporation of Washington to William Dowling, conveying Parcel "B," bearing date August 17, 1830.

20. Deed of William Dowling to Robert F. Howe, conveying Parcel "B," bearing date May 30, 1831.

21. Deed of Sarah Howe and Edward P. Pearson, Executors, to Robert F. Howe, conveying Parcel "B," dated July 18, 1835.

22. Will of Robert F. Howe, bearing date July 28, 1830.

23. Will of William Dowling, probated October 23, 1852.

24. Lease of Richard Reeder, Guardian to Costalio Hosmer, bearing date January 13, 1863.

25. Deed of Frances M. Dowling and Mary G. Dowling to John F. Ennis, Trustee, bearing date September 11, 1865.

26. Bill, Answer and Decree in Equity Cause filed June 22, 1865, by Frances M. Dowling against Mary G. Dowling.

27. Deed of John F. Ennis, Trustee, to Benjamin F. Isherwood, conveying Parcel "B," dated May 11, 1866.

28. Deed from Heirs of Abraham Bradley to Caleb Willard, conveying Parcel "C," bearing date September 21, 1852.

29. Subdivision of Lot Twenty By Benjamin F. Isherwood, dated August 16, 1873.

WM. E. AMBROSE,
Solicitor for Defendant.

56 *Order Permitting Amendment of Bill.*

Filed April 17, 1907.

In the Supreme Court of the District of Columbia.

Eq. 25974.

KATE WILLARD BOYD ET AL.
vs.
JOSEPH PARKER CAMP.

Upon consideration of the motion filed herein, it is, this 17" day of April 1907 by the Court ordered: That the complainants be and they are hereby permitted and directed to amend their bill filed

herein by specifying the liber and folio and case number to all of the instruments, records and documents referred to in said bill which amendments may be made on the margin thereof.

It is further ordered that the defendant may have thirty days after the filing of such amendments within which to plead or answer.

ASHLEY M. GOULD, *Justice.*

Demurrer.

Filed May 17, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD ET AL., Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

The defendant, Joseph Parker Camp, not confessing or
57 admitting all or any of the matters and things set forth in the bill of complaint and the amendment thereto to be true as therein alleged, does demur thereto, and for cause of demurrer shows that the said bill is incomplete and insufficient, in this that copies are not filed as exhibits thereto of the various deeds, records and other documents referred to therein and upon which the complainants rely and upon which their prayers for relief are predicated and which are material and necessary, in order that the court may be fully advised of the nature and scope of complainants' bill and the defendant enabled to determine whether he should demur to or answer the same.

WM. E. AMBROSE,
Solicitor for Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Joseph Parker Camp, being first duly sworn, on oath say: that I am the defendant named above and that the above demurrer is not interposed for the purpose of delay.

JOSEPH PARKER CAMP.

Subscribed and sworn to before me, this 16" day of May, A. D. 1907.

[SEAL.] CLAUDE D. THOMAS,
Notary Public, D. C.

I hereby certify that I believe the above demurrer to be well founded in law.

WM. E. AMBROSE,
Solicitor for Defendant.

58 *Order Sustaining Demurrer and Fixing Time to Plead.*

Filed February 28, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

No. 25974.

KATE WILLARD BOYD ET AL.
vs.
JOSEPH PARKER CAMP.

Upon consideration of the special demurrer filed herein it is this 28th day of February, 1908 by the Court ordered that said demurrer be and the same hereby is sustained with leave to complainants to file exhibits and it is further ordered that defendant be required to plead within fifteen days after the filing of all of the exhibits required to be filed by the Court.

ASHLEY M. GOULD, *Justice.*

59 COMPLAINANTS' EXHIBIT "F."

Filed March 30, 1908.

I, Caleb C. Willard, of Washington, in the District of Columbia, but temporarily at Atlantic City, New Jersey, being of sound and disposing mind and memory, do make, publish and declare this my last will and testament, hereby revoking any and all wills by me at any time heretofore made.

I appoint my daughter Kate Willard Boyd, my nephew Henry K. Willard, and my nephew George E. Howe, to be Executors of this my will and Trustees hereunder, and request that neither of them be required to furnish any surety or sureties on his official bond, either as Executor or as Trustee.

After the payment of all my just debts, I give, devise and bequeath the following sums, namely:

To the Episcopal Eye and Ear Hospital on Fifteenth street, in the City of Washington, the sum of Five thousand dollars as a memorial to my son Walter J. Willard.

To Floyd Miller of Chicago, Illinois the sum of Three thousand dollars.

To my nephew Edwin H. Willard, the sum of Five thousand dollars.

To John V. Camalier, now employed by me, the sum of Five thousand dollars.

Caleb C. Willard.

All the rest, residue and remainder of my estate, both real
60 and personal of any and every kind and wherever situated, of which I shall die possessed, I give, devise and bequeath to the said Kate Willard Boyd, Henry K. Willard and George E. Howe

and their heirs and assigns, but in trust nevertheless, to hold, manage and invest the same as a Trust Estate or Fund, to be known as "The C. C. Willard Estate," with all the powers hereinafter given, and to collect the rents, profits and income thereof, and to pay

C. E. B.
G. G.
M. L. K.

(1) all necessary and proper charges, including taxes, water rates, cost of insurance, and costs of repairs on real estate, together with a reasonable compensation to the Trustees for their services.

(2) To pay all premiums paid on bonds or other such investments out of said income, so that the principal of said Trust Estate may remain always unimpaired.

From the net income remaining after the above-mentioned payments I direct my said Trustees to pay to my sister Susan D. Dickinson, of Charlestown, New Hampshire, the sum of one hundred and twenty-five dollars each and every month from and after my decease during her natural life; to pay to my brother, C. Stevens Willard, of Westminster, Vermont, the sum of twenty-five dollars each month from and after my decease, during his natural life; to pay the remainder of said income in monthly instalments, one-half to my wife Lucy Parker Willard, and one-half to my daughter Kate Willard Boyd, which payments shall continue until the death of my said wife.

Caleb C. Willard.

After the death of my said wife, I direct my said Trustees to pay the whole of the remainder of said income to my said daughter, if she be living, during her natural life. In case my said daughter shall die before my said wife, I direct my Trustees to pay one-half of said income to my said wife, and the other half to the children of my said daughter, share and share alike.

61

C. E. B.
G. G.
M. L. K.

After the death of both my said wife and my said daughter, I direct my said Trustees to pay the whole of said remaining income to my grandchildren in equal shares, and said payments shall continue until the younger of said children shall reach the age of twenty-five years, when all said estate shall be divided equally between said grandchildren, the issue of any of said grandchildren then deceased taking its parent's share by right of representation.

In case any of my grandchildren should die before my said wife and daughter, or either of them, and before the time of distribution as hereinbefore provided, leaving issue them surviving, I direct my said Trustees to pay to such issue, in equal shares, the portion of its deceased parent in said income and in said principal.

In case of the death of any of my grandchildren leaving no issue surviving, the survivor or survivors shall be entitled to the share of income and principal of said deceased grandchild

Caleb C. Willard.

In the event of the death of all said grandchildren, leaving no issue, before the death of my wife and daughter, I direct my said Trustees to divide all my said estate among my heirs at law.

The foregoing provision for my said wife, which is in addition to what I have given her during my life, is in-

62 tended to be in lieu of dower and of any and all other rights which she might have in my estate.

I give to my said Trustees, in addition to the ordinary powers of management, the following special powers, namely:

(1) To let or lease my real estate or any part thereof for long or short periods, and on such terms as said Trustees shall see fit.

(2) To sell, at any time, any of the property be-
C. E. B. longing to the Trust, as a whole, or in parcels, in such
G. G. manner, at such prices, and subject to such terms, con-
M. L. K. ditions and agreements as they see fit, and to give deeds accordingly.

(3) To convert realty into personalty, personalty into realty, and to change investments.

(4) In their discretion to invest in real estate, in improvements thereon, in first mortgages thereon, or in any corporation bonds, stocks or other securities that are considered proper trust investments, always having as the first consideration the safety of the principal of said estate.

Caleb C. Willard.

(5) To keep proper books and accounts, which shall be open at all reasonable times to the inspection of any person interested in the Trust or to his duly authorized agent; and to render accounts at least twice each year to the persons interested in said Trust.

No grantee or purchaser, at any time, of any part of the Trust Estate, shall be under any obligation to inquire into the propriety of any sale, purchase or investment made by said
63 Trustees, nor to see to the proper application of the purchase money.

In the event of the death, disability, resignation, or removal of any of the said Trustees, or of any Trustee hereafter
C. E. B. appointed, a successor may be appointed by the proper
G. G. Court, with the advice and consent of my said wife
M. L. K. and daughter; and until such vacancy shall be filled, the surviv—

(4)

ing or continuing Trustee or Trustees shall have all the rights and powers hereinbefore given to the said Trustees.

In witness whereof I, the said Caleb C. Willard have hereto set my hand and seal this Twelfth day of July, in the year of our Lord one thousand nine hundred and five.

CALEB C. WILLARD. [SEAL.]

Caleb C. Willard.

Signed, sealed, published and declared by the said Caleb C. Willard as and for his last will, in presence of us, who, at his request, in his presence, and in the presence of each other, have hereto subscribed our names as witnesses, he having signed, and we having initialed, each page hereof.

CELIA E. BRIAN.
GEORGINA GRAHAM.
MAUDE L. KREBS.

C. E. B.
G. G.
M. L. K.

64 Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original will of Caleb C. Willard deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid; and that the said will, after having been duly proven, was, by order of the said Court, in accordance with the laws of the District of Columbia, admitted to probate and record on the 29th day of August, A. D. one thousand nine hundred and five.

I further certify, That said will was duly executed and proved agreeably to the laws and usages of the District of Columbia, and that I have compared the foregoing copy of said will, with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 6th day of March, A. D. 1908.

[SEAL.] WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

65 COMPLAINANTS' EXHIBIT "G."

Filed March 30, 1908.

Liber R No. 17, folio 26.

Daniel C. Brent, Trustee, Thomas Peter & Thomas Munroe,
to
Robert S. Bickley.

The following Deed was Recorded April 4th, 1807:

This indenture Made the third day of April in the year of our Lord one thousand Eight Hundred & Seven, Between Daniel Carroll Brent Trustee for the purposes hereinafter mentioned of the first part, Thomas Peter of the District of Columbia of the second part, Thomas Munroe Superintendant of the City of Washington of the third part, & Robert S. Bickley of the City of Philadelphia, of the fourth part. Whereas on the fourth day of October in the year Eighteen Hundred & Five in the Circuit Court of the District of Columbia held for Washington County in a cause depending, the said Court as a Court of Chancery between Robert S. Bickley Complainant, against Thomas Peter, Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frethy, James Daugherty,

Francis Lowndes Samuel Blodget Thomas McEwan, William Davidson & William Smith Defendants It was by the Authority of the said Court decreed, ordered, & adjudged that the said Samuel Blodget the Defendant do and shall pay to the said Robert S. Bickley the complainant on or before the twenty second day of November then next, the sum of twenty Six thousand Six hundred & thirty five Dollars & thirteen cents, Current money of the United States it being the amount of the Debt due from the said
66 Defendant Blodget, to the said Complainant with interest thereon Computed to the said twenty second day of November, & that the said Blodget the defendant do also on or before the day above limitted pay to the said Complainant his costs about that suit expended to be taxed by the Clerk of *of* the said Court, and if the said Samuel Blodget shall fail to pay the said sum of money or either of them or any part thereof to the said Complainant on or before the day above limitted, this and in that case it is as ordered and adjudged by the authority aforesaid that sundry Squares Lotts & Portion of ground & ground rents in the said City of Washington or so much thereof as shall be sufficient to raise & pay the said several sums of money or such part thereof as shall be unpaid on the said twenty-second day of November Eighteen hundred and five, exclusive of and over & above the Costs of executing the Decree be sold. And it was further decreed by the authority aforesaid that the said Daniel C. Brent be and he thereby was appointed Trustee for making the said sale. And it was further ordered and decreed by the authority aforesaid that the Defendant Thomas Peter upon the request of the said Trustee do join & become a party in and to all the Deeds by the said Trustee in virtue of the said Decree to be executed, & it was further decreed by the authority aforesaid that in all cases of Deeds to be executed by the Trustee in virtue of the said Decree for property, where the outstanding legal title now remains in the said Thomas Munroe as Superintendant of the City of Washington shall at the Request of the said Trustee join in
and become a party to such Deed. And the said Daniel C.
67 Brent by virtue and authority of the said decree having first complied with the direction thereof, of giving Bond for the faithfull discharge of the trusts Reposed in him and giving notice by advertisement of the time place and manner of such sale did at Stelles Hotel on Thursday the second day of January Eighteen hundred and six, the place and day of sale sell at public auction to the highest bidder on that & the two following days agreeably to the directions & terms of the said Decree all the Property & ground rent directed to be sold except such property as is excepted in the report of the said Trustee, and among other property so put up and exposed to sale, was Square numbered two hundred & seventy seven, Square East of Square four hundred & Seventy five, Square number one hundred and eighty two, Lots numbered five, six, seven, eight, nine & ten, in square number two hundred & twelve, Lot numbered ten, in Square number Eighty four, the west part of lot number nine, in Square numbered two hundred & twenty five, and that portion of the house which stands thereon. Lots

number one, four, five, seven, fourteen, & eighteen, in square Number two hundred, Square numbered one hundred & fifty Six, Square numbered one hundred & fifty seven, Square numbered one hundred & Eighty, Square numbered two hundred and eight, Square numbered two hundred & ten, Square numbered two hundred & thirty nine, Square numbered two hundred & forty one, Square numbered two hundred & seventy nine, Square numbered Three hundred & ten, Square numbered three hundred & thirty six, Square numbered three — & thirty seven, Square numbered three hundred & thirty eight, Square numbered three hundred & Sixty three,
68 Square numbered three hundred & Sixty five, Square numbered three hundred & sixty six, square numbered three hundred & ninety five, Square numbered three hundred *hundred* & ninety seven, Square numbered four hundred & Seventeen, Square numbered four hundred & Forty two, Square numbered four hundred & forty five, Square numbered four hundred & Seventy Eight, Square numbered five hundred and eight, square numbered five hundred and nine, Square numbered five hundred and
** square**
nineteen, Square North of Square two hundred & forty two of Square number three hundred & Ninety six, Square North of Square numbered five hundred and eight, Lot number Eight, in Square number one hundred & Sixty one, Lots number one, two, three, & ten, in Square number three hundred & ninety three, Lots number two, three, four, five, six, Eight, nine, ten, thirteen, fourteen, sixteen, & nineteen, in Square number six Hundred & Eighty Eight, Lots number one, two, & three, in square number four hundred & Sixteen, & the ground rent reserved by the said Samuel Blodget by Indenture made between him and James Daugherty one of the Defendants bearing date on the thirteenth day of April, Eighteen Hundred & one, to when Henry Pratt of the City of Philadelphia being the highest respectively—therefor, & for the respective sum mentioned in the said Trustees report amounting in the whole to the sum of Eleven thousand two hundred & Eighty dollars & thirty Eight, cents became the purchaser thereof. And among other property so as aforesaid put up and expond to sale at the time & place aforesaid was Square number one hundred & ninety five, Lo*tt*s number six, seven, eight, nine, ten, eleven, & twelve, in Square number one hundred & Fifty nine, Lot number Seven, in Square number two hundred & twenty five, Lots
69 number four, and twenty, in Square number four, Lot number twenty-one, in square number Sixteen, Lot number five, in Square number twelve, Square number one hundred & ninety three, and Lot number one, Eleven, twelve, fifteen, seventeen, twenty, twenty one, and part of twenty four, in Square number Six hundred & Eighty eight, being that part of the said Lot number twenty four, which is not included in the exception in the Decree aforesaid when George Budd of the City of Philadelphia being the highest bidder there for respectively became the purchaser thereof at & for the respective sums mentioned in the said trustees report,

amounting in the whole to the sum of six thousand & fifty five dollars, & nine cents, And it was on the twenty fifth day of January one thousand eight hundred & Six by the said Court ordered that the Report made by Daniel C. Brent, the Trustee in the case of the sale made by him be absolutely ratified, & confirmed, And Whereas the said Henry Pratt, & George Budd, by an Instrument of writing dated the thirty first day of October Eighteen Hundred & Six, & Recorded in Liber Q. No. 16 folio 178, 179, & 180, one of the Land Records of the Said County of Washington, in the District aforesaid, hath assigned transferred & set over to the said Robert S. Bickley & his heirs all the property purchased by them or either of them at a sale made by the said Daniel C. Brent trustee, in the case aforesaid at the time and place aforesaid, & which is entered in their or either of their names in the report of the said Trustee and the said Henry Pratt & George Budd doth by the said Instrument of writing authorize and empower The said Daniel C.
70 Brent as Trustee aforesaid to convey the property so as aforesaid purchased by them to the said Robert S. Bickley & his heirs and doth hereby authorize & request the said Thomas Peter & Thomas Munroe to join in and become parties to said conveyance in the same manner as they are directed by the said decree and in the same manner as if the said Robert S. Bickly had been the purchaser at said sale. And it was in the said Court at December Term Eighteen Hundred & Six, ordered that the said Daniel C. Brent Trustee as aforesaid, Thomas Peter & Thomas Munroe do respectively convey & transfer to Robert S. Bickley his heirs and assigns agreeably to the assignment, transfer, & power aforesaid, all the property purchased by the said Henry Pratt & George Budd at the sale made by the said Daniel C. Brent Trustee in the case aforesaid, the Before mentioned Proceedings will fully & at large appear reference being had to the decree & report aforesaid & the subsequent orders made in the Case aforesaid, all of which are entered on the Records of the said court. Now this indenture witnesseth that the said Daniel C. Brent as trustee aforesaid in consideration of the premises and for and in consideration of the sum of seventeen thousand three hundred & thirty six dollars & forty seven cents, current money of the United States to him in hand paid by the said Robert S. Bickly, he the said Daniel C. Brent doth hereby give grant bargain & sell Release & confirm to the said Robert S. Bickly his heirs and assigns all the Right title & Interest of, in, and to the Before mentioned Squares Lots & portions of ground & Ground rents in the City of Washington aforesaid which was in the said Samuel Blodgett & all the right, title, or interest
71 therein, which the said Thomas Peter deceased in and thereto by virtue of the Deed reference to in the said decree to have bargain by the Samuel Blodget to the said Thomas Peter & Thomas Johnson Jun. since deceased bearing date on the twenty Eighth day of January Seventeen hundred & ninety four, or which the said Thomas Peter hath in any way Since that time to the same or any

part thereof by through or from the said Samuel Blodget. And also all the right, title, & Interest, which the said Benjamin Stoddert, Francis Lowndes, Thomas McEwan, William Davidson, William Smith, the defendants or any of them or any other of the defendants in the Bill of complaint in the cause aforesaid named have, and to the same or any part thereof on which they or any of them derived from, by, or, through, the said Samuel Blodget in any manner since the said twenty eighth day of January Seventeen hundred and ninety four, and all the right interest and Estate which the said Thomas Munroe, the defendant hath in and to the same as Superintendent of the said City of Washington. And the said Thomas Peter in obedience to the said decree, and the assignment & power and the order of the said Court thereon made, & for and in consideration of the sum of one dollar to him in hand paid by the said Robert S. Bickly the receipt whereof he doth hereby acknowledge and doth by these presents give grant bargain & sell Release and confirm to the said Robert S. Bickly, his heirs and assigns, all the Right title or interest to the said before described Squares Lots & Portions of ground & ground rents which the said Thomas Peter derived in & thereto by virtue of the Deed referred to
in the said decree to have been given by the said Samuel
72 Blodget to the said Thomas Peter, & Thomas Johnson, Junr.
or which the said Thomas Peter hath in any way since that time to the same or any part thereof by through or from the said Samuel Blodget. And the said Thomas Munroe in ob-dience to the said decree and by the authority of the assignment, power, & order herein before mentioned & for and in consideration of the sum of one dollar to him in hand paid by the said Robert S. Bickly, the receipt whereof he doth hereby acknowledge & doth by these presents give, grant, bargain, & sell, release and confirm to the said Robert S. Bickly his heirs and assigns all the right title & interest which he the said Thomas Munroe as Superintendant of the City of Washington hath in and to the said West Part of Lot number nine, in Square number two hundred & thirty five, Lots number one, four, five, seven, fourteen, & Eighteen, in Square number two hundred. Lot number Seven, in Square number two hundred & twenty five, Lots number four, & twenty, in Square number four. Lot number twenty one, in Square number Sixteen Lot number five, in Square number twelve, & lots number one, two, three, four, five, six, Eight, nine, ten, Eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, *twenty*, twenty-one, and part of twenty four, in Square number six hundred & Eighty Eight, in the City of Washington aforesaid, as Superintendant of the said City. To have and to hold the said Squares Lo*t*s & Portions of ground & ground rents so as aforesaid respectively bargained & lots to the said Robert S. Bickley his heirs and assigns to his and their own proper use and behoof. In witness whereof the said Daniel C.
Brent Trustee, Thomas Peter, & Thomas Munroe, Superin-
73 tendant of the City of Washington aforesaid have hereunto

respectively subscribed their names & affixed their seals the day & year first within written.

DANIEL C. BRENT, *Trustee.* [SEAL.]
THOMAS PETER. [SEAL.]
THOMAS MUNROE. [SEAL.]

Signed, sealed and delivered in the presence of—
RICH'D PARROTT,
THOS. CORCORAN.

DISTRICT OF COLUMBIA,
Washington County, To wit:

On the third day of April, in the year one thousand Eight hundred & seven, Personally appeared Daniel C. Brent the Trustee within named Thomas Peter, & Thomas Munroe, Superintendant of the City of Washington aforesaid, Before us the subscribers two Justices of the Peace for the County aforesaid. And respectively acknowledged the aforegoing Instrument of writing to be their and each of their act and deed & the Squares Lotts & Portions of ground & ground rents therein mentioned to be right title & estate of the said Robert S. Bickly his heirs and assigns according to the true intent & meaning thereof.

Acknowledged Before

RICH'D PARROT.
THOS. CORCORAN.

74 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber R. No. 17, folio 26, *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

75 COMPLAINANTS' EXHIBIT 'H.'

Filed March 30, 1908.

Liber S. No. 18, folio 1 *et seq.*

Recorded June 1", 1807.

Daniel C. Brent, Trustee, and Thomas Peter
to
Robert F. Howe.

This Indenture made the fifteenth day of January in the year of our Lord one thousand Eight Hundred & Seven, Between Daniel

Carroll Brent, Trustee for the purposes hereinafter mentioned of the first part, Thomas Peter of the District of Columbia of the second part, & Robert F. Howe of Georgetown in the District aforesaid of the third part whereas on the fourth day of October in the year Eighteen hundred & five in the Circuit Court of the said District held for Washington County, in a cause depending in the said Court as a Court of Chancery, Between Robert S. Bickley complainant, against Thomas Peter, Thomas Monroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell William Thornton, John Stickney, Adam Lindsay, Edward Frethy, James Daugherty, Frances Lowndes, Samuel Blodget, Thomas McEuan, William Davidson & William Smith, defendants, it was by the authority of the said Court decreed, ordered & adjudged, that the said Samuel Blodgett the defendant do and shall pay to the said Robert S. Bickley the complainant on or before the twenty-second day of November then next ensuing, the sum of twenty six thousand six hundred & thirty five dollars & thirteen cents current money of the United States, it being the amount of the debt due from the said defendant Blodget to the said complainant with interest thereon computed to the
76 twenty-second day of November Eighteen Hundred & five, & that the said Blodget the defendant do also on or before the day above limitted pay to the said complainant his costs about that suit expended to be taxed by the Clerk of the said Court. And if the said Blodget shall fail to pay the said sum of money or either of them or any part thereof to the said complainant, on or before the day within limitted, then and in that case it was ordered & adjudged by the authority aforesaid, that sundry squares, lots & Portions of ground & ground rents in the City of Washington or so much thereof as shall be sufficient to raise and pay the said several sums of money or such part thereof as shall be unpaid on the said twenty second day of November Eighteen Hundred & five, exclusive of and over and above the cost of executing the said decree be sold reference being had to the said decree as the record of the said Court will fully & at large appear. And it was further decreed by the authority aforesaid that the said Daniel C. Brent be and he thereby was appointed trustee for making the—. And it was further ordered & decreed by the authority aforesaid that the defendant Thomas Peter upon the request of the said Trustee do join & become a party in and to all the Deed by the said trustee in virtue of the said decree to be executed & the said Daniel Carroll Brent by virtue and authority of the said decree having first complied with the direction thereof of giving bond for the faithful discharge of the trust reposed in him & giving notice by advertisement of the time place & manner of such sale did at Stelles Hotel on Thursday the Second day of January Eighteen Hundred & Six the place and day of sale sell at public auction to the highest bidder on that & the two fol-
77 lowing days agreeably to the direction & term of the decree & advertisement all the property and ground Rents, directed to be sold except such property as is excepted in the report of the said Trustee on the records of the said land & among other property & ground rent so set up and exposed to sale was the ground rent re-

served by the said Blodget by Indenture made between him and the said Edward Frethy one of the defendants bearing date on the fourth day of April Eighteen hundred & one when the said Robert F. How being the highest bidder therefor became the purchaser thereof at & for the sum of four hundred Dollars, which hath been fully paid & satisfied to the said Daniel C. Brent before the sealing & delivery hereof. Now This Indenture Witnesseth that the said Daniel Carroll Brent Trustee in consideration of the premises & for and in consideration of the said sum of four hundred Dollars current money, the receipt whereof he doth hereby acknowledge hath given granted bargained & sold released & confirmed & by these presents doth give grant bargain & sell release and confirm to the said Robert F. How & his heirs all the right title & interest of in and to the said ground rent, reserved by the said Samuel Blodget by Indenture made between him & the said Edward Frethy dated on the fourth day of April Eighteen Hundred & one, as aforesaid which was in the said Samuel Blodget previous to & at the time of making the said decree and all the right title & interest therein which the said Thomas Peter derived in and thereto by virtue of the Deed referred to in the said Decree to have been given by the said Samuel Blodget to the said Thomas Peter & Thomas Johnson Jr. since deceased bearing
78 date on the twenty eighth day of January seventeen hundred & ninety four on which the said Thomas Peter hath in any way since that time to the same or any part thereof by, through or from the said Samuel Blodget and also all the right title & interest which the said Benjamin Stoddert, Francis Lowndes Thomas McEuan, William Davidson & William Smith the defendant or any of them or any other of the defendants in the Bill of Complaint in the cause aforesaid named have in and to the same or any part thereof and which they or any of them derived from by or through the said Samuel Blodget in any manner since the said twenty eighth day of January seventeen Hundred & ninety four and all the right interest & estate which the said Thomas Munroe the defendant hath in and to the same as superintendant of the said city of Washington. And the said Thomas Peter in obedience to the said decree & for and in consideration of the sum of one dollar to him in hand paid by the said Robert F. How before the sealing & delivery hereof the receipt whereof he doth hereby acknowledge, he the said Thomas Peter doth by these presents give grant bargain & sell release & confirm to the said Robert F. How & his heirs all the right title & interest in the ground rents so as aforesaid reserved by the said Samuel Blodget which he the said Thomas Peter derived in and thereto by virtue of the Deed hereinbefore referred to, to have been given by the said Samuel Blodget to the said Thomas Peter & Thomas Johnson Jr. or which the said Thomas Peter hath in any way since that time to the same or any part thereof by through or from the said Samuel Blodget. To have and to hold the ground rents so as aforesaid reserved to the said Robert F. Howe &
79 his heirs. In witness whereof the said Daniel Carroll Brent Trustee & Thomas Peter have hereunto respectively sub-

scribed their names & affixed their seals the day & year first within written.

DAN'L C. BRENT, *Trustee.* [SEAL.]
THOMAS PETER. [SEAL.]

Signed sealed & delivered in the presence of—The word Six in the third line first page erased & the word seven inserted in its Stead before signing—
WILLIAM THORNTON.
THOS. CORCORAN.

DISTRICT OF COLUMBIA,
Washington County, To wit:

On this fifteenth day of January in the year Eighteen hundred & seven personally appeared Daniel Carroll Brent the Trustee within named & Thomas Peter also within named before us the subscribers two of the Justices of the Peace for the County aforesaid & respectively acknowledged the aforegoing Instrument of writing to be their and each of their acts and deed & the ground rent within mentioned to be the right title and estate of the said Robert F. How & his heirs according to the true intent & meaning of the said Decree & of the written Instrument of writing.
Acknowledged Before
WM. THORNTON.
THOS. CORCORAN.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and virified copy of an instrument as recorded in Liber S No. 18 Folio 1 *et seq.,*
80 one of the Land Records of the District of Columbia.
In testimony whereof, I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.
[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

81 COMPLAINANTS' EXHIBIT "I."

Filed March 30, 1908.

Deed. Recorded June 4th, 1819.

Liber A. V. 46, folio 20 *et seq.*

John Davidson
to
Charles Glover.

This indenture made the eighth day of May in the year of our Lord one thousand eight hundred and eighteen, between John

Davidson of the City of Washington in the District of Columbia of the one part, and Charles Glover of the same place of the other part.

Whereas, in a certain cause depending in the Circuit Court of the District of Columbia, setting for the County of Washington as a Court of Chancery, between Robert S. Bickley complainant and Samuel Blodget and others defendants, it was on or about the Fifth day of November, eighteen hundred and thirteen, adjudged, ordered and decreed that certain property in the said decree mentioned should be sold, and a certain Washington Boyd was thereby appointed Trustee, for the purpose of making the said sale. And the said Washington Boyd did in virtue of the power vested in him by the said decree after due notice thereof being first given, set up and expose, the said property at public sale to the highest bidder on the Fourteenth day of October eighteen hundred and sixteen, when the said Charles Glover being the highest bidder became the purchaser of the following property, lying, and being, in the said City of Washington, being part of the property in the said Cause decreed to be sold to wit: the whole of Square west of square One hun-
82 dred and fifty-seven, the east half of square two hundred and seven, and eleven feet, eleven inches fronting on F Street north, being part of lot Twenty, in Square Two Hundred and fifty-four leased to Edward Tennell for ninety nine years, renewable forever under the annual ground rent of twenty four Dollars at and for the sum of four hundred and five dollars and fifty cents, which said sale so as aforesaid made was by the said Court on or about the third day of June, eighteen hundred and eighteen finally ratified and confirmed. And the said Washington Boyd having on the twenty-fifth day of June in the year last aforesaid resigned the Trust vested in him by the said Decree, the said Court did thereupon appoint the said John Davidson, Trustee in the said Cause for the purpose of making deeds to the several purchasers at the sale aforesaid. And the said Charles Glover having fully satisfied and paid to the said Washington Boyd the amount of the said purchase money, all which proceedings will fully and at large appear, reference being had to the Record of the proceedings of the said Court in the Cause aforesaid. This indenture therefore witnesseth, that the said John Davidson Trustee as aforesaid in consideration of the premises and of the said sum of Four hundred and five Dollars and fifty cents so as aforesaid paid to the said Washington Boyd. Hath bargained, sold and conveyed, and by these presents doth bargain, sell and convey, unto the said Charles Glover his heirs and assigns forever all the interest claim and right of the said Samuel Blodget of, in and to the said pieces and portions of ground in the said City of Washington to wit, the whole of Square, west of Square One hundred and fifty-
83 seven, the east half part of square two hundred and seven, and part of Lot Twenty, in Square two hundred and fifty-four, fronting eleven feet eleven inches on North F Street, leased to Edward Tennell for ninety nine years, renewable forever under the annual ground rent of Twenty four Dollars. Together with the rights, privileges and appurtenances to the same belonging or in any wise appertaining. To have and to hold, the said pieces and por-

tions of ground and premises with the appurtenances to the said Charles Glover his heirs and assigns forever to his and their own proper use, benefit and behoof. In witness whereof, the said John Davidson Trustee as aforesaid hath hereto subscribed his name and affixed his seal the day and year first within written.

JOHN DAVIDSON. [SEAL.]

Signes sealed and delivered in the presence of—

ABRAHAM BRADLEY, 3*d*.
JOSEPH FORREST.

WASHINGTON, *October* 14*th*, 1816.

Charles Glover bought of Washington Boyd, Trustee.

The whole of Square west of Square 157.....	22.50	22.50
The east half of square 207.....	171.	171.
Part of lot 20 in Sq. 254 fronting eleven feet eleven inches on F Street North leased to Edward Tennell for 99 years renewable forever under the annual ground rent of $24.....		212.
		405.50

84 Received of Charles Glover four hundred and five dollars and fifty cents being the consideration money mentioned in the aforegoing deed of conveyance.

WASHINGTON BOYD.

DISTRICT OF COLUMBIA, *To wit:*

On this Eighth day of May in the year eighteen hundred and eighteen John Davidson personally appeared before the subscribers two Justices of the Peace in and for Washington County in the District aforesaid and acknowledged the aforegoing instrument of writing to be his act and deed for the purposes therein mentioned.

JOSEPH FORREST.
BENJ. G. ORR.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber A. V. — 46, folio 20 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 11th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

85 COMPLAINANTS' EXHIBIT "J."

Filed March 30, 1908.

Liber Q. 16, folio 178 *et seq.*

Henry Pratt & George Budd
to
Robert S. Bickley.

The following Assignment & Power of Attorney was Recorded January 1807:

Whereas, in a Cause depending in the Circuit Court of the District of Columbia held for Washington County, as a Court of Chancery, between Robert S. Bickley complainant against Thomas Peter, Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithy, James Dougherty, Francis Lowndes, Samuel Blodgett, Thomas McEwan, William Davidson, & William Smith Defendants. It was on the fourth day of October Eighteen hundred & five decreed ordered and adjudged by the authority of the said Court that Sundry Squares, Lotts & Portions of Ground & Ground Rents in the City of Washington be sold for the purposes particularly mentioned in the said Decree & it was also decreed by the authority aforesaid that Daniel Carroll Brent be and he thereby was appointed Trustee for making Said Sale & the said Daniel Carroll Brent having complied with all Previous directions of the Said Decree did at Stelle's Hotel in the City of Washington expose to Public Sale, on the Second, third, & fourth days of January Eighteen hundred & Six the property mentioned in the said Decree, When
86 Henry Pratt & George Budd of the City of Philadelphia, being the highest bidders for certain Property particularmentioned in the said Trustee's Report, entered on the Records of the Said Court, at & for the sums mentioned in the Said Report and Whereas the Property so purchased was purchased for the use & benefit of the said Robert S. Bickley and the said Henry Pratt & George Budd being desirous that a conveyance should be made for the whole of the property so purchased by them as aforesaid to the said Robert S. Bickley & his heirs. Now Know all men by these Presents, that we the said Henry Pratt & George Budd for consideration of the Premises & for and in consideration of the sum of one dollar to each of us in hand Paid to Robert S. Bickley have and each of us hath assigned, transferred & set over and by these Presents do*th* assign, transfer & set over to the said Robert S. Bickley and his heirs all the property purchased by us & each of us at the Sale aforesaid & which is entered in our and each of our names on the Report of the said Trustee aforesaid, and we do hereby authorize and empower, the said Daniel Carroll Brent, as trustee aforesaid, to convey the same to the said Robert S. Bickley, and his heirs, in like

manner, as by Law the same ought to be conveyed to us, and each of us, & do also authorize and request the said Thomas Peter, and Thomas Munroe, Superintendent of the said City of Washington to join in and become parties to such conveyance, in the same manner as they are directed by the said Decree, and in the same manner as if the said Robert S. Bickley, had been the purchaser at said Sale; and been returned as such by the said Trustee. In testimony whereof we have hereunto subscribed our names & affixed our
87 seals in the City of Philadelphia this thirty-first day of October in the year one thousand Eight hundred & Six.

HENRY PRATT. [SEAL.]
GEO. BUDD. [SEAL.]

Sealed & delivered in the presence of us—
JOHN BOISO.
JA. WHITEHEAD.
JOSEPH CLAY.

I, Clement Biddle, Notary Public for the Commonwealth of Pennsylvania, duly commissioned & qualified, residing in the City of Philadelphia, do hereby certify that on this day the first of November in the year one thousand Eight Hundred and Six, before me personally came Henry Pratt & George Budd & acknowledged the above assignment, & Power of Attorney, to be their and each of their acts & deed & that John Boiso, James Whitehead & Joseph Clay subscribed their names as witnesses to the Execution thereof. All which I attest as above the day and year above written.

[SEAL.] CLEMENT BIDDLE.

On this third day of November in the year one thousand Eight Hundred & Six, before me Robert Wharton, Esquire, Mayor of the City of Philadelphia, personally came James Whitehead, one of the subscribing witnesses to the execution of the within Instrument, & being duly sworn on his solemn oath deposes and says that he was present & did see Henry Pratt & George Budd sign, seal,
88 and as their act and deed deliver, the within assignment, & Letter of attorney, for the purposes therein mentioned, & that he the deponent together with John Boiso & Joseph Clay subscribed their names, witnesses to the execution thereof.

JA. WHITEHEAD.

In testimony whereof, I have hereunto set my hand & caused the seal of the Mayorality of said City, to be hereto affixed, the day & year above written, & I do hereby — that Clement Biddle before whom the above mentioned acknowledgment was taken & who has signed -is name & affixed his seal of office thereto, is a Notary Public for the Commonwealth of Pennsylvania duly commissioned & authorized to receive proof & acknowledgment of Letters of Attorney &c. to signatures and certificates — as such full faith & credit are due & ought to be given.

[SEAL.] ROBERT WHARTON, *Mayor.*

DISTRICT OF COLUMBIA, *To-wit:*

Be it remembered that on this Second day of January 1897, personally appeared Joseph Clay & made oath on the Holy Evangels of Almighty God, that he was present & did see Henry Pratt & George Budd of the City of Philadelphia, sign & seal, and as their act and deed, deliver the annexed Power of Attorney, for the uses, intents and purposes therein expressed & set forth, & that at the time
89 of the execution thereof, he, this deponent & John Boiso & James Whitehead did set & subscribed their names as witnesses thereto, in manner as thereby appears.

Sworn Before,

ROBT. ALEXANDER.

DISTRICT OF COLUMBIA, *To-wit:*

Be it remembered that on this 13th day of January 1807, personally appeared before me, Chief Judge of the Circuit Court of the District of Columbia, Joseph Clay, & made oath on the Holy Evangels of Almighty God that he was present and did see Henry Pratt & George Budd of the City of Philadelphia, sign & seal and as their act and deed, deliver the annexed Power of Attorney for the uses, intents & purposes therein expressed & set forth & that at the execution thereof, he, this deponent & Jno. Boiso & James Whitehead did set and subscribe their names as witnesses thereto, in manner as thereby appears.

Sworn to Before,

W. CRANCH.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber Q., 16, folio 178 *et seq.*,
90 one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

91 COMPLAINANTS' EXHIBIT "K."

Filed March 30, 1908.

Deed.

Sam'l Blodget
to
U. Forrest & B. Stoddert.

Liber B. No. 2, folio 265 *et seq.*

This indenture made this seventh day of July in the year of our Lord one thousand seven hundred and ninety-five between Samuel

Blodget now of Philadelphia of the one part, & Uriah Forrest & Benja Stoddert of the other part. Witnesseth that the said Samuel Blodget in consideration of one Dollar to him in hand paid by the said Uriah Forrest, & Benj" Stoddert, before the execution of this Indenture the receipt of which is hereby acknowledged, & also for other good causes & considerations has granted, bargained, sold aliened, released, & confirmed, and by these presents doth grant bargain, sell, alien, enfeoff release & confirm unto the said Uriah Forrest & Benjamin Stoddert their heirs & assigns all his the said Blodget's Lands, Tenements, Lots, & Real Estate, of what kind or nature whatsoever, the same may be, situate within the Territory or District of Columbia; together with all and singular the houses, buildings, improvements, ways waters, water courses, privileges, hereditaments, & appurtenances to the said real estate or any part thereof belonging or in any manner appurtaining & the reversion & reversions remainder & remainders rents issues and profits of the said Estate, & every part, & parcel thereof, & all the estate right title interest property claim and demand both in Law and equity of the said Samuel Blodget of in & to the said Real Estate, & every part thereof. To have and to hold all and singular the hereby bargained and sold lands and premises with the appurtenances to the said Uriah Forrest, and Benjamin Stoddert, their heirs & assigns,
92 to the only proper use and behoof of the said Uriah Forrest, & Benjamin Stoddert, their heirs & assigns forever subject Nevertheless to the following proviso—that is to say,—if the said Samuel Blodget his heirs, executors, or administrators, shall well and truly pay, and satisfy, all prizes which shall be drawn in the Lottery No. Two for the improvement of the Federal City to the several persons who shall be entitled to the same in the manner d. scribed in a scheme of the said Lottery signed by the said Samuel Blodget and published in the Georgetown newspaper, and shall in all respects comply with all the duties & engagements in the aforesaid scheme mentioned on the part of the said *of the said* Samuel Blodget to be done and performed, then & in such case, and at all times, from thence thereafter these presents and all the estate hereby granted, and every clause, and sentence herein contained shall cease determine and be utterly void to all intents & purposes, anything herein contained to the contrary thereof in anywise notwithstanding. In Witness Whereof the said Samuel Blodget hath hereunto set his hand & affixed his seal on the day & year above written.

SAM. BLODGET. [SEAL.]

Sealed & delivered in the presence of
GUSTS. SCOTT.
GEO. WILSON.

On the back of which Deed was their endors.s to wit: Receiv.d 7 July 1795 of Uriah Forrest & Benjamin Stoddert one doll.s being the consideration within mentioned.

SAM. BLODGET.

Test:
GUSTS. SCOTT.

MARYLAND, *Territory of Columbia:*

Personally appeared before me the subscriber one of the
93 Commissioners appointed in virtue of the Act of Congress for establishing the temporary and permanent seat of the Government of the United States the within named Samuel. Blodget & acknowledged the written Instrument of writing to be his Act and Deed & the Land and premises therein mentioned to be the right, title, & interest & Estate of the within named Benjamin Stoddert & Uriah Forrest their heirs & assigns forever. Taken & acknowledged before me this 8" July 1795.

Recorded the 24" of July 1795.

GUST.S SCOTT.

OFFICE OF RECORDER OF DEEDS,
District of Columbia.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber B. No. 2, folio 265 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th, day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

94 COMPLAINANTS' EXHIBIT "L."

Filed March 30, 1908.

Deed. Recorded September 15th, 1813.

Liber A. F. No. 31, folio 240.

Robert S. Bickley
to
James Daugherty.

This indenture made the first day of May in the year of our Lord one thousand eight hundred and thirteen Between Robert S. Bickley of Holmsberg in the State of Pennsylvania of the one part and James Daugherty of the City of Washington in the District of Columbia of the other part. Witnesseth that the said Robert S. Bickley for and in consideration of the sum of four hundred dollars current money to him in hand paid by the said James Daugherty before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, he the said Robert S. Bickley hath granted, bargained and sold assigned and transferred and by these presents. Doth give, grant, bargain and sell, assign, and transfer, unto the said James Daugherty his heirs and assigns forever. All that part of lot number twenty, in square number two hundred and fifty four, in the City of Washington fronting on F. Street north, twenty feet which said part of a lot and premises was heretofore to wit on or about

the thirteenth day of April in the year eighteen hundred and one, Leased on the conditions therein mentioned, by a certain Samuel Blodget to the said James Daugherty and all the estate, interest and claim of the said Samuel Blodget in and to the said part of a lot and premises, was afterwards sold and conveyed by Daniel C.
95 Brent as Trustee, under a decree of the said Circuit Court of the District of Columbia for the County of Washington to the said Robert S. Bickley which will fully appear, reference being had to the Land Records of the County of Washington, in the District of Columbia. together with the rights, privileges and appertenances thereto belonging or in anywise appertaining. To have and to hold the said part of a lot of Ground and premises with the appertenances to the said James Daugherty his heirs and assigns forever to his and their own proper use, and no other forever and the said Robert S. Bickley for himself his heirs executors, and administrators doth hereby covenant, promise, grant, and agree, to and with the said James Daugherty his heirs, executors, administrators and assigns to warrant and forever defend the said part of a lot and premises, to the said James Daugherty, his heirs and assigns forever from and against all and every person or persons who shall or may claim the same, or any part thereof, by from or under him the said Robert S. Bickley, or his heirs. And the said Robert S. Bickley doth hereby constitute and appoint Washington Boyd of the said City of Washington his true and lawful attorney, and doth hereby authorise and empower him to appear before any Court Judges or Justices authorized by law to take the acknowledgment of Deeds in the District aforesaid, and then and there to acknowledge this Instrument of writing as and for the act and deed of him the said Robert S. Bickley according to the Laws in such case provided, hereby ratifying and confirming whatever the said Attorney shall do in the premises, in virtue hereof. In witness whereof the said Robert S. Bickley hath hereto subscribed
96 his name and affixed his seal the day and year first within written.

ROBT. S. BICKLEY. [SEAL.]

Signed, Sealed and Delivered in the Presence of us.
THOMAS L. McKENNEY.
JAMES CORCORAN.

DISTRICT OF COLUMBIA,
Washington County, To wit:

On the twenty first day of May 1813 Thomas L. McKenney one of the Subscribing Witnesses, to the aforegoing Instrument of writing personally appeared before the Subscriber, and made oath on the Holy Evangels of Almighty God that he was present and saw Robert S. Bickley sign, seal, and as his act and deed deliver the aforegoing Instrument of writing, at and for his act and deed, for the purposes therein mentioned. And that he the said Thomas L. McKenney and James Corcoran did set and subscribe their names as Witnesses thereto, in the presence of each other and in the pres-

ence and at the request of the said Robert S. Bickley in manner as thereby appears.

Sworn before

JNO. OTT.

DISTRICT OF COLUMBIA, *To wit:*

On the tenth day of June 1813. Washington Boyd within named personally appeared before me the Subscriber, Assistant
97 Judge of the Circuit Court of the District of Columbia, and acknowledged the within Instrument of writing as and for the Act and deed of Robert S. Bickley the grantor therein named, according to the Law in such — provided, and the property therein mentioned to be the right, title, and estate of James Daugherty therein also named his heirs and assigns forever.

N. FITZHUGH.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber A. F. No. 31, folio 240, *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

98 COMPLAINANTS' EXHIBIT "M."

Filed March 30, 1908.

In the name of God Amen—

I James Dougherty of the City of Washington, make this my last Will and testament; as follows—

First, I give devise and bequeath the whole of my estate, Real, personal and mixed, to my beloved Wife Mary Dougherty, to her & her heirs forever—in fee simple—

I also constitute & appoint my friend William Hayman of George Town District of Columbia, Executor of this my last Will & testament—

In witness whereof I have hereunto set my hand & Seal, this 27th day of June in the year 1826—

JAMES DOUGHERTY. [SEAL.]

District,

Signed, Sealed & acknowledged in the presence of us to be his last Will & testament—

EZEKIEL YOUNG.
JOSIAH BOSWORTH.
ELIJAH CHANEY.

99 Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To-wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original will of James Dougherty deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid; and that the said will, after having been duly proven, was, by order of the said Court, in accordance with the laws of the District of Columbia, admitted to probate and record on the 12th day of July, A. D. one thousand eight hundred and twenty six.

I further certify, That said will was duly executed and proved agreeably to the laws and usages of the District of Columbia, and that I have compared the foregoing copy of said will with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 6th day of March, A. D. 1908.

[SEAL.] WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia,
Clerk of the Probate Court.

100 COMPLAINANTS' EXHIBIT "N."

Filed March 30, 1908.

Deed of Trust. Recorded 3rd August, 1847.

Liber W. B. 136, folio 23.

John Byrne
to
George Cover.

This indenture, Made the thirtieth day of July in the year One thousand Eight and forty seven. Between John Byrne of the City of Washington of the first part, William Reden of Georgetown in the District of Columbia of the Second part, and George Cover of the City of Washington of the third part, Whereas the said party hereto of the first part, is indebted unto the said party hereto of the second part, by his three Bonds or Single Bills with — as Surety each for the Sum of Two Hundred and forty dollars, all bearing date the Seventh day of June last, and payable with interest from date at Six, Twelve, and Eighteen, Months after date. Now this indenture witnesseth, that in order to secure the said Bonds or Single Bills and in consideration of the Sum of One Dollar current money of the United States in hand paid to the said party hereto of the first part,

by the said party hereto of the third part at or before the Execution of these presents (the receipt whereof is hereby acknowledged), He the said party hereto of the first part Hath granted, bargained and sold, aliened, released and confirmed, and by these presents Doth grant, bargain, sell alien, release and Confirm unto the said party hereto of the third part and his heirs, All *that* the following piece or parcel of ground situate and being in the said City of
101 Washington to wit: Part of Lot number twenty, in Square Number Two Hundred and fifty-four, fronting twenty feet on F Street, and extending back of equal width One Hundred and fifty feet, Containing three thousand One hundred and eighty Square feet, with the frame tenement thereon Now in the occupation of the said party hereto of the first part, together with all the improvements, rights, Members, and appurtenances to the same belonging, and all the estate, right, title, and interest therein and thereto legal and Equitable of the said party hereto of the first part. To have and to hold the said piece or parcel of ground and hereditaments above described and every part thereof, with the appurtenances unto and to the use of the said party hereto of the third part, and his heirs upon the trusts hereinafter expressed of and concerning the same upon trust to secure unto the said party hereto of the second part, his executors, administrators and assigns the said three Bonds, or Single Bills above mentioned. And if the same or any of them, or any part thereof shall not be duly and punctually paid at the time or times, at which the same shall become due and payable it shall and may be lawful to and for the said party hereto of the third part his heirs or assigns, absolutely to sell, and dispose of the said premises for any one default at public auction upon such terms, and at such time and place, as he or they shall think most for the advantage of all parties concerned, first, giving one Month's notice of the time, terms, and place of sale by advertisement in some Newspaper of good circulation in the said City of Washington; with power upon any such sale to convey the said premises
102 unto the purchaser, and his or her heirs. And upon further trust that the said Trustee for the time being do, and should dispose of the said trust funds, as follows: First in the payment of all expenses attending the said sale and the usual Commission to trustees in such cases; Next in the payment of the said three Bonds, or Single Bills above mentioned, or such of them, or such part thereof as shall then remain unpaid, and the whole thereof shall *then remain unpaid, and the whole thereof shall* be then actually payable or not, so that one or more be then due and payable with all interest and costs in respect thereof, and the residue if any do and shall pay over to the said party hereto of the first part his Executors, Administrators and assigns. And the said party hereto of the first part, Doth hereby Covenant to and with the said party hereto of the third part his heirs and assigns, that he the said party hereto of the first part, and his heirs and all other persons do, and shall, at all times hereafter, make, do, and execute, all such further acts and deed and things for better Conveying the premises aforesaid, unto the said party hereto of the third part, his heirs and assigns, which

he or they shall or may require. In witness whereof the said party hereto of the first part hath hereunto set his hand and seal the day and year first above written.

JOHN BYRNE. [L. S.]

Signed Sealed and Delivered in the presence of—
J. D. CLARK.
JOHN L. SMITH.

103 DISTRICT OF COLUMBIA,
Washington County, To wit:

We John D. Clark, and John L. Smith, Justices of the Peace in and for the County above named do hereby certify that John Byrne a party to the aforegoing deed of Indenture bearing date the 30th day of July 1847 instant and hereto annexed personally appeared before *me* in our County aforesaid on the day of the date hereof, he being personally well known to us as the person who executed the said deed, and the said John Byrne did then and there in our presence execute and acknowledge the same as and for his act and deed. Given under our hands and seals this 30th, day of July in the year One thousand eight hundred and forty seven.

JOHN D. CLARK, *J. P.* [L. S.]
J. L. SMITH, *J. P.* [L. S.]

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber W. B. 136, folio 23 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

104 COMPLAINANTS' EXHIBIT "O."

Filed March 30, 1908.

Trust. Recorded 22d July, 1850.

Liber J. A. S. 15, folio 283 *et seq.*

John Byrne
to
Wm. Redin.

This indenture, made the nineteenth day of February in the year one thousand eight hundred and forty eight between John Byrne of Washington City of the first part, John P. Heiss of the same place of the second part, and William Redin of Georgetown

in the District of Columbia of the third part. Whereas the said party hereto of the second part, hath consented to loan to the said party hereto of the first part, his promissory note for two hundred and fifty dollars made payable to the said party of the first part, or order, and which he intends to have discounted, and against the payment of the same and all renewals thereof in whole or in part he intends by these presents to secure and save harmless, the said party hereto of the second part. This Indenture therefore witnesseth, that in pursuance of such intention and in consideration of the sum of one dollar current money of the United States in hand paid to the said party hereto of the first part by the said party hereto of the third part at or before the execution of these presents (the receipt whereof is hereby acknowledged), he the said party hereto of the first part hath granted, bargained, sold, aliened, and released, And by these presents doth grant bargain sell alien and release unto the said party hereto of the third part, and his Heirs,
105 All that lot piece or parcel of ground situate and being in the said city of Washington, being part of lot numbered twenty, in square number two-hundred and fifty four, fronting twenty feet on F street and extending back of equal width one hundred and fifty nine feet, containing three thousand one hundred and eighty feet. Together with the buildings, improvements, rights, members and appurtenances to the same belonging. And all the estate right title and interest therein and thereto legal and equitable of the said party hereto of the first part being the same premises which the said party hereto of the first part purchased of the said party hereto of the third part as Trustee of the Court, in a Cause Hayman & others against Hayman and of which, a deed of trust hath been made to George Cover, to secure certain debts therein mentioned, due for the purchase money of the said premises, as by such deed recorded among the land records may appear). To Have and to hold the said piece or parcel of ground and hereditaments above mentioned and described, (subject to the said prior deed and the debts or sums of money secured thereby, and every part thereof with the appurtenances unto and to the use of the said party hereto of the third part, his heirs and assigns upon the trusts following to wit. Upon trust to indemnify and save harmless, the said party hereto of the second part of, from and against the payment of the said Note above mentioned, and all renewals of the same in whole or in part, And all principal Money interest and costs in respect thereof, And if the said party hereto of the first part, do and shall well & truly indemnify and save harmless the said party hereto of the second part, as aforesaid, and do and
106 shall well and truly pay the said note when required. Upon this further trust on full payment of the same and all renewals thereof the said party hereto of the third part his heirs or assigns do and shall reconvey the said premises unto the said party hereto of the first part his heirs and assigns, But if there shall be any failure on the part of the said party of the first part his heirs or assigns to indemnify and save harmless the said party of the

second part his Executors and Administrators of from and against the said note and all principal and interest money, and costs and all renewals of such note or to pay the same when required, it shall be lawful for the said party hereto of the third part his heirs or assigns, to advertize the said premises for sale, at auction by advertisement to be inserted in some Newspaper printed in the City of Washington on such terms as the said party hereto of the third part, his heirs or assigns shall think reasonable and after twenty days' notice of such sale, and unless the said debt be paid and full indemnity afforded as aforesaid, before the appointed time of sale to sell the same premises, and on the payment of the purchase money, to convey the same to the purchaser thereof and his heirs who shall be under no obligation to see to the due application of his purchase money, having paid the same to the said party hereto of the third part his heirs or assigns. And upon further trust that the proceeds of such sale shall be applied first to pay all expenses of this trust, including the usual commission to trustees in such cases, next in paying off, to the said party hereto of the third part, his executors
administrators or assigns the balance now owing for the orig-
107 inal purchase money, and all interest due thereon the same
being secured by a deed of trust of the said premises made to George Cover (and subject to which incumbrance this Security is expressly made) And after payment thereof then to pay the principal and interest money and costs due and owing upon the said Note or any renewal thereof, so that the said party of the Second part his heirs Executors and Administrators shall be fully indemnified and saved harmless of & from the same; And after fully effecting the purposes aforesaid to pay over any residue there may be of said purchase money unto the said party hereto of the first part his executors administrators or assigns. And the said party hereto of the first part doth hereby for himself his heirs executors and administrators covenant and agree to and with the said party hereto of the third part, his heirs and assigns that he the said party of the first part and his heirs shall and will warrant and defend the said premises unto him and them against all persons forever by these presents; and that he and they and all such persons shall at all times hereafter do any further act the better to convey the said premises unto the said party of the third part, his heirs and assigns which he or they shall or may require, and further that he will forthwith insure the buildings on the said premises against accident by fire, in some good office of insurance in the sum of at least two hundred fifty dollars and keep the same so insured in his own name or the name of the said party hereto of the second part and pay all expenses attending the same, and in default thereof that the said party hereto of the second part may make and keep
up such insurance, and all moneys he shall pay in respect
108 thereof shall be secured on and by these presents upon said
premises, and in the event of any accident by fire the said party of the second part his heirs, Executors, or Administrators, shall be and he and they are hereby authorized to receive all moneys

which may become due in virtue of any such policy of insurance and apply the same to the payment of the said debt above mentioned. In Witness Whereof the said party hereto of the first part hath hereunto set his hand and seal the day and year first above written.

JOHN BYRNE. [SEAL.]

Signed, Sealed & delivered in the presence of
JOHN L. SMITH.
T. C. DONN.

DISTRICT OF COLUMBIA,
Washington County, To wit:

We John L. Smith and Thomas C. Donn Justices of the Peace in and for the County above named do hereby certify that John Byrne a party grantor in the aforegoing deed of Indenture, hereunto annexed and bearing date this 19th day of February instant, appeared personally before us in our County aforesaid on the day and year aforesaid (he being personally well known to us as the person who executed the said deed) and the said John Byrne did then and there acknowledge the same to be his act and deed. Given under our hands and seals this 19th day of February in the
109 year Eighteen hundred and forty eight.

J. L. SMITH, *J. P.* [L. S.]
T. C. DONN, *J. P.* [L. S.]

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber J. A. S. 15, folio 283 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

110 COMPLAINANTS' EXHIBIT "P."

Filed March 30, 1908.

Deed — Conveyance. Recorded October 9th, 1852.

Liber J. A. S. 46, folio 198 *et seq.*

William Redin & George Coover, Trustees,
to
Benjamin F. Isherwood.

This indenture made this twenty-fifth day of September in the year one thousand eight hundred and fifty two, between William Redin

of George Town in the District of Columbia of the first part George Coover of the City of Washington, in the said District of the second part, and Benjamin F. Isherwood of the City last named of the third part. Whereas by a decree of the Circuit Court of the said District pronounced in a cause wherein William Hayman and Elizabeth Hayman were complainants and Anna Hayman and others were defendants, on the eighteenth day of May in the year Eighteen hundred and forty seven the said William Redin was appointed Trustee to sell a certain parcel of ground in the said City of Washington fronting on the south side of F Street between Thirteenth and Fourteenth streets, being part of lot numbered twenty in square numbered two hundred and fifty four fronting twenty feet on F street and extending back of equal width one hundred and fifty nine feet, and being the Easternmost part of said lot numbered twenty, with the tenement standing thereon, for the purposes expressed in said decree as by reference to the proceedings may appear. And whereas
111 the said William Redin in Execution of such decree exposed the said parcel of ground to sale at auction on the seventh day of June in the year last named at which sale a certain John Byrne was the highest bidder for, and became the purchaser of the said parcel at the sum of nine hundred and sixty dollars upon the terms, of one fourth thereof in cash, and the residue at six, twelve, and eighteen months, for which deferred payments he passed his notes and having paid the cash portions, the said sale was reported to the said Court, and by an order of the twenty second of October in the same year was ratified and confirmed, and the said William Redin Trustee, as aforesaid was authorized to convey the said parcel of ground upon the full payment of the residue of the said purchase money. And whereas by deed of indenture bearing date the thirteenth day of July in the year aforesaid between the said John Byrne of the first part the said William Redin of the Second part and the said George Coover of the third part the said John Byrne in order to secure the payment of his said three notes, given for the residue of the said purchase money conveyed unto the said George Coover and his heirs all his Estate and interest in and to the said parcel of ground in trust to sell the same if the said notes should not be paid as they would fall due which sale was to be upon such terms as the said William Redin should direct and after one month's public notice thereof as by reference to the said deed may fully appear. And whereas by another deed of indenture bearing date the nineteenth day of February in the year eighteen hundred and forty eight, between the said John Byrne of the first part John Heiss of the second part, and the
112 said William Redin of the third part the said John Byrne in order to protect said Heiss from the payment of a note for two hundred and fifty dollars which he had loaned said Byrne conveyed all his said interest in and to said parcel of ground unto the said William Redin in trust to sell the same if the said Heiss should have to pay the said note and the same should not be repaid by the said Byrne, which last sale was to be made upon the said notice and the same terms as the sale authorized to be made in the said first recited deed as reference to both such deeds may more fully appear

and whereas the said Heiss had to pay the said note, and the said Byrne did not repay the same, nor did he pay the said promissory notes given for the residue of the said purchase money, but the whole of the same stood over and are still unpaid, and being unpaid the interest and estate of the said John Byrne under his said purchase became liable to sale under both the said deeds. And whereas the said George Coover acting under the said deed of the thirteenth day of July aforesaid and the said William Redin acting under the deed of the nineteenth day of February aforesaid, advertised the said premises for sale for satisfaction of the respective debts secured by said *debts* respectively of which sale one month's public notice was given and the same was advertised to tak- place on the fifteenth day of September instant, on which day the said parcel of ground and premises were offered for sale at public auction. And the said Benjamin F. Isherwood was the highest bidder for and became the purchaser of the same at the price or sum of one thousand and seven hundred and seventeen dollars and twenty cents upon the
113 terms of one fourth of the purchase money in cash and the residue at six, twelve, and eighteen, months. And whereas the said Benjamin F. Isherwood hath paid the sum of four hundred and twenty nine dollars and thirty cents the cash payment and executed his three notes for similar sums which are intended to be secured on said premises, by a deed of trust of his estate and interest already prepaid. This indenture witnesseth that in consideration of the said sum of four hundred and twenty nine dollars and thirty cents current money of the United States to the said William Redin in hand paid by the said Benjamin F. Isherwood at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) and also in consid- of the residue of the said purchase money being secured as aforesaid and also in consideration of the sum of one dollar like money, to each of them the said William Redin, and George Coover, paid at the same time and in the same manner by the said Benjamin F. Isherwood, the receipts whereof are hereby also acknowledged. He the said William Redin as Trustee, under the decree hereinbefore recited and also as Trustee under the said deed of the Nineteenth day of February Eighteen — and forty eight, hath granted, bargained, sold, aliened, released, and conveyed, and by these presents doth, grant, bargain, sell, alien, release, and convey, and the said George Coover as Trustee under the said deed of the thirteenth day of July Eighteen hundred and forty seven hath granted bargained sold aliened released and confirmed and by these presents doth grant bargain sell alien release and confirm unto the said party hereto of the third part. Benjamin F. Isher-
114 wood and his heirs, All that the said piece or parcel of ground in the said City of Washington fronting on the south side of F street between 13th & 14th streets being part of lot numbered twenty, in the said square numbered two hundred and fifty four fronting twenty feet on F street, and extending back of equal width 159 feet, and being the easternmost part of the said lot numbered twenty. together with all the improvements thereon, rights members and appurtenances to the same belonging, and all the estate right

title and interest legal and equitable of the said parties hereto of the first and second parts therein and thereto. To have & to hold the said parcel of ground and hereditaments above described and every part thereof, with the appurtenances unto and to the use of the said Benjamin F. Isherwood his heirs and assigns for ever. In witness whereof the said parties hereto of the first and second parts have hereunto set their hands and seals the day and year first above written.

WM. REDIN. [SEAL.]
GEORGE COVERY. [SEAL.]

Signed sealed & delivered in the presence
WM. R. WOODWARD.
H. NAYLOR.

DISTRICT OF COLUMBIA,
Washington County, To wit:

We William R. Woodward & Henry Naylor Justice- of the peace, in and for the County above named, do hereby certify that
115 William Redin and George Cover parties to a certain deed of indenture, bearing date this twenty fifth day of September instant, and hereunto annexed personally appeared before us in our County aforesaid, on the day of the date hereof, they being personally well known to us as the persons who executed the said Deed and the said William Redin and George Cover did then and th-re in our presence each for himself execute and acknowledge the said deed or instrument of writing as and for his respective act and deed. Given under our hands and seals this twenty fifth day of September one thousand Eight hundred & fifty two.

WM. R. WOODWARD, *J. P.* [SEAL.]
H. NAYLOR, *J. P.* [SEAL.]

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber J. A. S. 46 folio 198 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

116 COMPLAINANTS' EXHIBIT "Q."

Deed. Recorded January 31, 1883, 3:10 *P. M.*

Liber 1028, folio 381.

Benj. F. Isherwood *et ux.*
to
Caleb C. Willard.

This Indenture, Made this Fourth day of May in the year of our Lord one thousand eight hundred and eighty two by and between Benjamin Franklin Isherwood of the U. S. Navy, and Anna Hansine Isherwood, his wife, of the first part, and Caleb C. Willard of the City of Washington, District of Columbia of the second part: Witnesseth, That the said parties of the first part, for and in consideration of the sum of Forty one thousand two hundred and seventy three Dollars & seventy five cents in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns, forever, the following described real estate situate in the City of Washington, District of Columbia to wit: All those certain pieces or parcels of land and premises, known and distinguished as and being Sub-Lots Twenty-eight (28) & Twenty-nine (29) of Miller & Isherwood's Recorded subdivision of original lot twenty (20) in square numbered Two hundred and fifty four (254) containing 8254¾ Square feet
117 more or less. Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said parties of the first part, of, in, to or out of the said pieces or parcels of land and premises. To have and to hold, the said pieces or parcels of land and premises with the appurtenances, unto the said party of the second part, his heirs and assigns, to his sole use, benefit, and behoof, forever. And the said parties of the first part, for themselves and for their heirs, executors, and administrators do hereby covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part and their heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, by from under or through them the said parties of the first part, and all persons whomsoever. And further, that they the said parties of the first part, and their heirs, shall and will at any and at all times hereafter, upon the re-

quest and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other Deed or Deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of land and
118 premises and appurtenances, unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise, or require. In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

BENJAMIN FRANKLIN ISHERWOOD. [SEAL.]
ANNA HANSINE ISHERWOOD. [SEAL.]

Signed, sealed and delivered in the presence of—
MAURICE V. FREUND.

STATE OF NEW YORK,
County of New York, ss:

I, Maurice V. Freund a Notary Public in and for the State & County aforesaid. do hereby cer-ify, That Benjamin Franklin Isherwood & Anna Hansine Isherwood his wife, parties to a certain Deed bearing date on the Fourth day of May A. D. 1882 and hereunto annexed, personally appeared before me, in the State & County aforesaid, the said Benjamin Franklin Isherwood & Anna Hansine Isherwood his wife, being personally well known to me to be the person who executed the said Deed, and acknowledged the same to be their act and deed, and the said Anna Hansine Isherwood being of full age and by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had wil-
119 lingly signed, sealed and delivered the same, and that she wished not to retract it. Given under my hand and notarial seal, this 4 day of May A. D. 1882.

[NOTARIAL SEAL.] MAURICE V. FREUND,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
City and County of New York, ss:

I, William A. Butler, Clerk of the City and County of New York, and also Clerk of the Supreme Court, for said City and County, the same being a Court of Record, do hereby certify, That Maurice V. Freund whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same. And further that I am well acquainted with the hand writing of such Notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said Instrument is executed and acknowledged ac-

cording to the law of the State of New York. In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 4 day of May 1882.

[COURT SEAL.] WM. A. BUTLER, *Clerk.*

120 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1028, folio 381, *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

121 COMPLAINANTS' EXHIBIT R.

Filed March 30, 1908.

Liber G, No. 7, folio 301 *et seq.*

Edward Frethy
to
Frederick Betz.

At the request of Frederick Betz the following Indenture of Assignment was Recorded the Seventh day of October eighteen hundred and one, to wit:

This indenture, made this Nineteenth day of Sept-er in the year One thousand eight hundred and one. Between Edward Frethy, of the City of Washington, in the District of Columbia, of the one part, and Frederick Betz of the same place, of the other part. Whereas in and by one Indenture of Lease, bearing date the fourteenth day of April in the year one thousand eight hundred and one Made, or mentioned to be made between Samuel Blodget of Philadelphia and State of Pennsylvania of the one part, and the said Edward Frethy, of the other part. He the said Samuel Blodget for the considerations therein mentioned did demise, grant, lease and to farm let, unto the said Edward Frethy his executors, administrators and assigns. All that Lott of nineteen feet eleven inches and a half, West front on F Street North running in depth one hundred and fifty nine feet to an alley which Lott is part or Lott No. Twenty, in Square No. two hundred and fifty four, in the City of Washington aforesaid; together with all improvements and alleys ways or privileges belonging to the said Lott of Ground unto the said Edward Frethy to be had and holden from the day of the
122 date, of the said Indenture. and for and during the full term of ninety nine years from thence next ensuing, and fully to be completed and ended; at and under the yearly rent of forty dollars current money, of the United States, and to be re-

newable forever. And among other things in and by the Indenture it was Covenanted and agreed that upon payment of the sum of five hundred dollars by the said Edward Frethy his heirs or assigns to the said Samuel Blodget. He the said Samuel Blodget his heirs or assigns would execute a deed in fee simple, and that in case any part of the principal money not being less than one twentieth part thereof, should be paid a proportionable part of the rent should be deducted as in and by the said in part recited Indenture, reference being thereto had will more fully and at large appear. Now, this indenture witnesseth, that the said Edward Frethy for and in consideration of the sum of One dollar to him in hand paid by the said Frederick Betz, the receipt whereof the said Edward Frethy doth hereby acknowledge and the said Frederick Betz of and from every part and parcel thereof exonerated and discharged. He the said Edward Frethy hath granted, bargained, sold, assigned and set over, and by these presents doth grant, bargain, sell, assign and set over unto the said Frederick Betz, his executors, administrators and assigns all the said Lot*t* of Nineteen feet eleven inches and a half, West front on F Street North, running in depth one hundred and fifty nine feet to an alley, and premises above recited and every part and parcel thereof; together with the said recited Indenture of Lease. To have and to hold the said Lot*t* and premises above mentioned and described and hereby assigned, and every part and parcel
123 thereof with the appurtenances unto the said Frederick Betz his executors, administrators and assigns, for and during all the rest, residue and remainder of the said term of ninety nine years, above recited which is yet to come and unexpired in as large and ample manner to all intents and purposes, as he the said Edward Frethy, his executors, administrators or assigns have or hath, might, should, or ought to have held, & enjoyed, the same by force and virtue of the said recited Indenture of Lease or by any other ways and means whatsoever. And the said Edward Frethy doth covenant and grant to and with the said Frederick Betz, that the said recited and assigned Indenture of Lease is now in full force and effect. And that the said Edward Frethey hath done no act to incumber the said premises, but now hath good right and lawful power and authority, to grant and assign the said Lot*t* and premises, and every part and parcel thereof with the appurtenances unto the said Frederick Betz in manner aforesaid. And also that the said Frederick Betz his executors, administrators and assigns, shall and may (under the rents and covenants reserved in the said Lease being performed by them) at all times hereafter and for and during the rest and residue of the said Term of Ninety nine years as aforesaid which is yet to come and unexpired peaceably and quietly enter into have, hold, occupy, poesess and enjoy the said Lot*t* and premises hereby assigned and every part and parcel thereof, with the appurtenances without the let, trouble, hindrance molestation or denial of him the said Edward Frethey, his executors and administrators or any other person or persons whatsoever lawfully claiming the said premises or any part thereof, by, from or under him, them, or any of
124 them, or by his or their means or procurement. And further that he the said Edward Frethy his executors or admin-

istrators at any time or times during the continuance of the said recited Indenture of Lease at the request and proper costs and charges in the Law of the said Frederick Betz his heirs or assigns make and execute, or cause to be made and executed all and every such further and other act and acts, and assurances in the law whatsoever, for the further & more perfect granting and assigning of the said premises above mentioned with the appurtenances unto the said Frederick Betz, for and during all the rest and residue of the said Term of ninety nine years, to come and unexpired, as by the said Frede*i*rck Betz his heirs or assigns or his or their council learned in the Law shall be reasonably devised or advised and required. In witness whereof, the parties to this Indenture have hereunto set their hands and seals the day month and year first above mentioned.

EDW'D FRETHY. [SEAL.]
FRED'K BETZ. [SEAL.]

Signed, sealed and delivered in presence of—
MICHAEL DOWLING.
JAMES McCLOSKY.

DISTRICT OF COLUMBIA,
Washington County, To wit:

Personally appeared before the subscriber one of the Commissioners of the City of Washington appointed by the president of the United States by virtue of an Act of Congress for establishing the temporary and permanent Seat of the government of the
125 United States the within named Edward Ferthy and Frederick Betz and acknowledged the foregoing Indenture of Assignment to be their act and deed and delivered for the uses and purposes therein mentioned.

Acknowledged this fifth day of October, 1801.
Before

WILLIAM THORNTON.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber G No. 7, folio 301 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

126 COMPLAINANTS' EXHIBIT S.

Filed March 30, 1908.

Liber I. 9, folio 325.

Frederick Betz
to
George Betz.

At the request of George Betz the following deed of assignment was recorded the Ninth day of May Eighteen hundred and three:

This indenture, Made this Twenty-fourth day of January in the year of our Lord one thousand eight hundred and three, Between Frederick Betz of the City of Washington, in the District of Columbia, of the one part, and George Betz of the City of Baltimore, of the other part: Witnesseth, that the said Frederick Betz for and in consideration of the sum of twelve hundred dollars, current money of the United States, to him in hand paid by the said George Betz at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said Frederick Betz of and from every part and parcel thereof exonorated, acquitted and discharged by these presents, hath granted, bargained sold, assigned and set over and by these presents, doth grant, bargain, sell, assign and set over unto the said George Betz, his heirs and assigns forever, all the estate, right, title and interest of the said Frederick Betz of and in that part of Lot No. Twenty in Square No. Two hundred and fifty-four in the City of Washington aforesaid, being Nineteen feet eleven inches and a half front on F Street North running in depth one hundred and fifty-nine feet to an alley and being the same part
of lot which Samuel Blodget leased to Edward Frethy for
127 ninety-nine years, renewable forever and which the said Edward Frethy assigned and set over unto the said Frederick Betz as by deed of lease and assignment now of Record among the Land Reocrds in the Office of the County of Washington in the District of Columbia, reference being thereto had, will more fully and at large appear. To have and to hold the said lot and premises above mentioned and described and hereby assigned and every part and parcel thereof with the appurtenances unto the said George Betz, his executors, administrators and assigns for and during the rest, residue and remainder of the said term of ninety-nine years above mentioned which is yet to come and unexpired in as large an ample manner to all intents and purposes as he the said Frederick Betz, his executors, administrators or assigns have, hath, might, should or ought to have held and enjoyed the same by force and virtue of the said recited indenture of lease, or by any other ways and means whatsoever, and the said Frederick Betz doth covenant and grant to and with the said George Betz, that the said recited and assigned Indenture of Lease is now in full force and effect and that the said Frederick Betz hath done no act to incumber the said premises

but now hath good right and lawfull power and authority to grant and assign the said lot and premises and every part and parcel thereof, with the appurtenances unto the said George Betz in manner aforesaid, and also that the said George Betz, his executors, administrators and assigns shall and may (under the rents and covenants reserved in the said lease being performed by them) at all times hereafter and for and during the rest and residue of
128 the said term of ninety-nine years as aforesaid which is yet to come and unexpired, peaceably and quietly enter into, have, hold, occupy, possess and enjoy the said lot and premises hereby assigned and every part thereof, with the appurtenances without the let, trouble, hindrance, molestation or denial of him, the said Frederick Betz, his executors and administrators or any other person whatsoever lawfully claiming the said premises or any part thereof, by, from or under him, them or any of them, or by his or their means or procurement, and further, that he the said Frederick Betz, his executors or administrators, at any time or times during the continuance of the said recited Indenture of Lease, at the request and proper cost and charges in the law of the said George Betz, his heirs or assigns, will make and execute or cause to be made and executed all and every such further and other act and acts and assurances in the law whatsoever, for the further and more perfect granting and assigning of the said premises above mentioned with the appurtenances unto the said George Betz for and during all the rest, and residue of the said term of ninety-nine years to come and unexpired, as by the said George Betz, his heirs or assigns or his or their counsel learned in the law shall be reasonably devised, advised and required. In witness whereof, the parties to this Indenture, have hereunto set their hands and seals the day, month and year first above written.

FREDK. BETZ. [SEAL.]
GEORGE BETZ. [SEAL.]

Signed, sealed and delivered in presence of—
DAVID HOSTETTER.
JNO. BITTINGER.

129 DISTRICT OF COLUMBIA,
Washington County, To-wit:

Personally appeared Frederick Betz, one of the parties to the foregoing Instrument of writing, before the subscriber an Assistant Judge of the Circuit Court of the District of Columbia, and acknowledged the same to be his act and deed and delivered for the uses and purposes therein mentioned, acknowledged this Thirtieth day of April Anno Domini 1803.

W. CRANCH.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber I. 9, folio 325 *et seq.*, one of the

Land Records of the District of Columbia. In testimony Whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

130 COMPLAINANTS' EXHIBIT T.

Filed March 30, 1908.

Liber K. No. 10, folio 204.

George Betz
to
John Thorp.

At the Request of John Thorp the following assignment of Lease was recorded the fifteenth day of February Eighteen hundred and four:

This indenture made the fifteenth day of February in the year of our Lord one thousand eight hundred and four, between George Betz of the City of Baltimore in the State of Maryland of the one part, and John Thorp of Baltimore County, in the State aforesaid, of the other part. Witnesseth that the said George Betz for and in consideration of the sum of one thousand Dollars current money of the United States to him in hand paid by the said John Thorp at or before sealing and delivery of these presents the receipt whereof is hereby acknowledged and thereof and of and from every part thereof doth acquit exonerate release and discharge the said John Thorp his heirs executor administrator and assigns and every of them forever by these presents hath granted bargained sold assigned transfered and set over and by these presents doth grant bargain sell assign transfer and set over unto the said John Thorp his Executor administrator and assign all the estate and interest of him the said George Betz of and in that part of Lot number twenty in Square number two hundred and fifty-four in the City of Washington aforesaid being nineteen feet eleven and one half inches front on F Street North running in depth one hundred and
131 fifty-nine feet to an alley and being the same part of the Lot which Samuel Blodget leased to Edward Frethey for ninety nine years renewable forever and which the said Edward Frethy assigned and set over unto Frederick Betz who assigned and transfered the same unto the said George Betz as by Deeds of Lease and assignment now of Record in the office for Recording Deeds in Washington County in the District of Columbia, reference being thereunto had may appear. together with the back dwelling house on said part of a Lot erected and built, and all other improvements, rights, membey, priveleges and appurtenances thereto belonging or appertaining. To have and to hold, the said part of a Lot of

ground, improvements and premises with the appurtenances unto the said John Thorp his Executors, administrators and assigns for and during the rest residue, and remainder of the said term of ninety nine—and other the estate and interest thereon granted and demised as above recited in as full, large, ample and beneficial a manner to all intents and purposes as he, the said George Betz might or could hold the same in case these presents had not been made, or executed subject to the payment of the rent and performance of the covenants and agreements in the original Lease mentioned on the part of the Lessee or assignee to be observed and performed, and the said George Betz for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said John Thorp his executors and administrators and assigns, that the said original Lease is in full force and effect, and that the said George Betz hath not made, done or committed any act, deed, matter, or thing, whereby the said premises are, or is, liable
132 to be incumbered, and that he hath full power and authority to grant and assign said premises in manner aforesaid, and also that he the said John Thorp his executors, administrators, and assigns, shall and may on payment of the payment and observance of the covenants in said original Lease mentioned, on the part of the tenant or lessee to be observed and performed peaceably and quietly, have hold, use, occupy, possess, and enjoy, the said part of lot, improvements and premises for the residue of the term now to come, and unexpired, thereof without the Let, suit, molestation, or eviction, of him the said George Betz, his executors, or administrators, or any other person, or persons claiming, or to claim, by, from, under or in trust for him or them, and lastly, that the said George Betz his executors or administrators shall and will at any time hereafter at the requests, costs, and charges, of the said John Thorp his executors administrators or assigns make and execute or cause to be made and executed all and every such further act and acts deed or assurance in the law for the more fully and effectually conveying, assuring, and confirming, the said premises unto the said John Thorp his executors administrators and assigns for the term of years and subject to the rent, covenants, and agreements, aforesaid as by the said John Thorp his executors, administrators or assigns or by his or their counsel learned in the Law shall or may be reasonably advised or devised and required. In witness whereof the said George Betz doth hereunto subscribe his hand and affix his seal the day and year first above written.

GEORGE BETZ. [SEAL.]

Signed, sealed and delivered in the presence of
THOMAS HERTY.

133 DISTRICT OF COLUMBIA,
County of Washington, ss:

On the 15th day of February one thousand eight hundred and four before me the subscriber, Chief Judge of the Circuit Court of

the District of Columbia personally appeared George Betz party to the within Indenture, and acknowledged the same to be his act and deed according to the true intent and meaning thereof.

W. KITTY.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber K, No. 10 folio 204 *et seq.* one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

134 COMPLAINANTS' EXHIBIT "U."

Filed March 30, 1908.

Deed. Recorded 8th February, 1831.

Liber W. B. No. 1-199, folio 144 *et seq.*

Corporation of Washington
to
William Dowling

This indenture, made this Seventeenth day of August in the year of our Lord one thousand eight hundred and thirty between the Mayor, Board of Aldermen, and Board of Common Council of the City of Washington of the one part, and William Dowling of the same place of the other part, witnesseth, That, Whereas the said Corporation, by virtue of the powers on them conferred by the acts of Congress passed for their incorporation, have, from time to time laid and imposed certain annual taxes on all the real and personal property within the said city, agreeably to the several assessments; And whereas part of Lot numbered twenty and the improvements in square numbered Two hundred and fifty-four, lying and being within the said city, became liable and chargeable to said Corporation, as the property and in the name of Robert F. Howe for the following taxes; that is to say, Three dollars ninety-eight cents for the year 1819, Three dollars ninety-eight cents for the year 1821, Five dollars ninety-eight cents for 1822, Nine dollars ninety-eight cents for 1823, and Thirteen dollars sixty-eight cents for 1824 amounting in all, including the expenses of sale, to the sum of Forty-two dollars ninety-seven cents. And whereas, by sundry acts of the said Corporation, imposing annual taxes and providing for their
135 collection, (by virtue of sundry acts of Congress) it is enacted, that whenever two years' taxes remain due and unpaid on any improved or unimproved lot or lots of ground in the City of Washington, it shall be the duty of the Collector of the ward in

which such lot or lots are situated to sell the same at public auction, or so much thereof as may be necessary to pay such taxes and expenses attending such sale, after given such notice, and subject to the terms, conditions and provisoes as are in the said acts of said Corporation mentioned. And whereas the above described part of lot & improvements having two years' taxes due and unpaid thereon, and no personal property being found liable to payment of the same F. Coyle, collector of the said taxes, after having previously given public notice of the sale, by advertisement inserted in the National Intelligencer, a newspaper printed in the City of Washington, for twelve successive weeks, next before said sale, therein stating the number of said Lot to whom assessed, and said amount of taxes did offer for sale at public auction on the twenty fifth day of February eighteen hundred and twenty six the aforesaid part of Lot & improvements to pay the taxes aforesaid, and expenses attending such sale at which sale Anthony Preston being the highest bidder became the purchaser of all of said part of Lot & improvements for the sum of Two hundred dollars and then paid to the said Collector the amount of said taxes and expenses of said sale. And whereas the said Anthony Preston, did on the Sixth day of March 1826, for value received, assign all his right title and interest to the said part of lot and improvements to the said William Dowling. And
136 more than two years have elapsed since the day of the said sale and the monies paid for the taxes and expenses aforesaid, with ten per centum per annum as interest thereon, not having been repaid or tender of the same made to the said William Dowling or deposited in the hands of any officer of the Corporation authorised to receive the same and the said William Dowling having paid the balance or surplus money into the City Treasury amounting to one hundred and ninety six dollars twenty five cents, has become entitled to a conveyance of said premises. Now therefore, this indenture witnesseth, That the said Mayor, Board of Aldermen, and Board of Common Council of the City of Washington, in consideration of the premises, and of the sum of one dollar, current money, to them in hand paid by the said party of the second part at or before the sealing and delivering of these presents, the receipt of which is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said party of the second part his heirs and assigns forever, all the said part of Lot numbered twenty, and the improvements in square numbered Two hundred and fifty four, in the City of Washington D. C. with the appurtenances: To have and to hold the premises with the appurtenances unto the said party of the second part his heirs and assigns forever, to his & their use. In testimony whereof, John P. Van Ness esq. Mayor, hath hereunto set his hand, and caused the seal of the said Mayor, Board of Aldermen, and Board of Common Council, of the City of Washington, to be hereunto affixed on the
137 day and year first above written.

JOHN P. VAN NESS, *Mayor.*

Attest:

WM. HEWETT, *Reg'r.*

[CORPO. SEAL.]

DISTRICT OF COLUMBIA,
Washington County:

Be it remembered, That on this 17th day of August in the year one thousand eight hundred and thirty before the subscribers, two justices of the peace in and for Washington County, appears John P. Van Ness Esq. Mayor of the City of Washington, and acknowledges the above indenture or instrument of writing to be the act and deed of the Mayor, Board of Aldermen and Board of Common Council of the City of Washington, delivered for the use and purposes therein mentioned.

Acknowledged before, and certified by

GEO. NAYLOR.
WM. HEWETT.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber W. B. No. 1-199 Folio 114 *et seq.*, one of the Land Records of the District of Columbia. 138

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 12th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

139 COMPLAINANTS' EXHIBIT V.

Filed March 30, 1908.

Deed. Recorded 30th May, 1831.

Liber W. B. 36-86, folio 299.

William Dowling
to
Robert F. Howe.

This indenture made this thirtieth day of May, in the year of our Lord one thousand eight hundred and thirty one, Between William Dowling of the City of Washington, in the District of Columbia of the one part, and Robert F. Howe of the other part. Whereas on the twenty fifth day of February in the year eighteen hundred & twenty six, all that part of lot numbered Twenty and the improvements in Square numbered Two hundred and fifty four, assessed in the name of the said Robert F. Howe, was sold for taxes due to the Corporation of the said City of Washington, amounting in all including expenses of sale to the sum of Forty two dollars ninety seven cents, at which sale Anthony Preston being the highest bidder became the purchasers of all of said lot & improvements for the sum of Two hundred dollars, & then paid the said amount of said taxes

& expenses, and whereas afterwards—to wit—on the sixth day of March Eighteen hundred and twenty six, the said Anthony Preston did for value received assign all his right, title and interest to the said part of lot & improvements to the said William Dowling, and Whereas on the Seventeenth day of August in the year Eighteen hundred and thirty the Mayor, Board of Aldermen & Board of Common Council of said City of Washington, by deed duly exe-
140 cuted & acknowledged conveyed the said part of lot of ground & premises to the said William Dowling his heirs & assigns, and Whereas the said William Dowling is desirous to convey to the said Robert F. Howe all his *heirs* title & interest in and to said part of lot of ground, reserving only such leasehold interest as he may have existing therein—Now this indenture witnesseth that the said William Dowling in consideration of the premises and of the return of the monies paid by him into the Treasury of the said City of Washington on said lot of ground & also of the sum of one dollar to him in hand paid at or before the ensealing & delivery of these presents, hath granted, bargained & sold, released, enfeoffed & confirmed & by these presents doth grant, bargain & sell release, enfeoff, & confirm unto the said Robert F. Howe, his heirs & assigns all the said part of lot of ground and premises being part of lot numbered Twenty in Square numbered Two hundred and fifty four in said City of Washington and the right, title, interest and estate of him the said William Dowling therein except the lease hold right belonging to him in the same—To have and to hold the said part Lot of ground and premises so as aforesaid described together with the improvements and appurtenances unto the same belonging unto the said Robert F. Howe his heirs and assigns forever to his and their use and to and for no other use intent or purpose whatsoever. And the said William Dowling for himself, his heirs executors & administrators doth covenant grant, promise & agree to and with the said Robert F. Howe, his heirs, executors, administrators and assigns that he the said William—& his heirs the said part of lot of ground and premises, to him the said Robert F. Howe, his heirs and
141 assigns against him the said William and his heirs and against all and every person claiming or to claim any right, title, or interest in and to the same by, through from or under him the said William, shall and will forever warrant & defend by these presents, it being the intention nevertheless of the parties to these presents that the said William is not to surrender his leasehold interest in the said part of lot & premises. In witness whereof the said William Dowling has hereunto set his hand and affixed his seal the day & year first above written.

WILLIAM DOWLING. [SEAL.]

Signed sealed & delivered in presence of—
page 2 line 1 "part" interlined
" " " 18 "interest" interlined

WM. HEWITT.
GEO. NAYLOR.

DISTRICT OF COLUMBIA,
Washington County, ss:

On this thirtieth day of May A. D. 1831 before us the subscribers two Justices of the Peace in and for the County aforesaid personally appeared William Dowling party grantor within named and acknowledged the within & preceding indenture or instrument of writing to be his act and deed & the part of Lot & premises therein mentioned & thereby conveyed to *to* be the right & estate of the within named Robert F. Howe, partee grantee his heirs &
142 assigns, according to the purport, true intent & meaning thereof.

WM. HEWITT.
GEO. NAYLOR.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber W. B. 36-86, folio 299, *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

143 COMPLAINANTS' EXHIBIT "W."

Filed March 30, 1908.

Deed. Recorded the Sixteenth Day of October, Eighteen Hundred and Thirty-five.

Liber W. B. 56, folio 449 *et seq.*

Sarah How & Others
to
William Dowling.

This indenture made this eighteenth day of July in the year of our Lord, eighteen hundred and thirty-five, between Sarah How of Burlington County in the State of New Jersey, and Edward P. Pearson of Lebanon County, in the State of Pennsylvania, of the one part, and William Dowling of Washington County, in the District of Columbia, of the other part. Whereas a certain Robert F. How, of Burlington County in the State of New Jersey, died, seized of a lot, piece or parcel of ground lying, and being, in the City of Washington, in the District of Columbia, containing nineteen feet, eleven inches and a half of ground West, front on F Street north, running in depth one hundred and fifty-nine feet, to an alley which said lot is part of a lot of ground, designated and described on the

plat of said City, as Lot numbered Twenty (20) in Square numbered Two hundred and fifty-four, which said part of lot numbered twenty, in Square numbered Two Hundred and fifty-four, on the plat of said City, the said Robert F. How, deceased, held under a deed of conveyance to him, from Daniel C. Brent Trustee and Thomas Peter, made the fifteenth day of January in the year of our Lord, Eighteen Hundred and Seven, and recorded among the Land Records of Washington County, in the District of Columbia
144 in Liber S. No. 18, Page 1, by reference to which said deed, the trusts, power and authority under which the said Daniel C. Brent and Thomas Peter, acted will more fully and at large appear, which said part of a lot of ground, above mentioned and described at the time of the making of the said deed, above mentioned was subject to a lease for ninety-nine years, renewable forever; as will more fully and at large appear, by reference to an Indenture of Lease, dated the Fourth day of April in the year of our Lord Eighteen Hundred and One, and recorded among the Land Records of Washington County, in the District of Columbia, in Liber G, page 299. And whereas, the said Robert F. How, deceased being so seized, of the premises above mentioned, and described, made his last will and testament bearing date the twenty-eighth day of July, in the year of our Lord eighteen hundred and thirty, wherein and whereby he authorized and required his executors, to sell and dispose of all his estate both real and personal for the purpose of paying his debts, and the legacies bequeathed by the said Robert F. How, deceased, in his last will and testament as will more fully and at large appear by reference to his last will and testament duly proved before the Surrogate of the County of Burlington, in the State of New Jersey, on the Fourth day of June, in the year of our Lord, eighteen hundred and thirty-one, and filed in his office. And whereas, the said Robert F. How deceased, did by his last will and testament above mentioned constitute and appoint the aforesaid Sarah How, and Edward P. Pearson and also Thomas Y. How, executors of his said last will and testament. And whereas, the said Thomas
145 Y. How, by his deed of renunciation, dated the Fourth day of June in the year of our Lord, eighteen hundred and thirty-one, and filed on the thirteenth day of June, in the year above mentioned, in the office of the Surrogate of the County of Burlington, in the State of New Jersey did renounce his office of Executor of the said last will and testament of Robert F. How, deceased, and decline acting in the settlement of the estate of the said Robert F. How, and whereas, the said Sarah How, and Edward P. Pearson Executors as aforesaid in pursuance of the authority given them by, and the requisitions of the said last will and testament of the said Robert F. How deceased did, on the first day of Noveniber in the year of our Lord Eighteen Hundred and thirty four proceed to sell at auction the premises above mentioned and described, and sold the same to the said William Dowling, then in possession of the said premises, under the Indenture of Lease, above mentioned and described, for the sum of Four Hundred and Eighty Dollars.—Now therefore this

indenture witnesseth, that the said Sarah How, and Edward P. Pearson executors of the last will and testament of the said Robert F. How deceased by virtue of the authority given to them in the said last will and testament, in consideration of the premises and also in consideration of the sum of Four Hundred and Eighty Dollars, current money of the United States by the said William Dowling to them in hand paid, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, and sold aliened assigned transferred and set over; and by these presents do grant, bargain, sell alien, transfer and set over
146 and convey unto the said William Dowling and his heirs all the right, title, interest, estate property claim and demand whatsoever, or which the said Robert F. How deceased had in and to the premises above mentioned and described, at and immediately before the time of his decease. To have and to hold, the said premises, and all the said right, title, interest, and estate, property claim and demand whatsoever, of the said Robert F. How, deceased therein at and before the time of his decease, unto the said William Dowling and his heirs and assigns for ever. And the said Sarah How, and Edward P. Pearson, Executors aforesaid, for themselves their heirs, executors, and administrators do severally, and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only, covenant promise grant and agree to and with the said William Dowling, his heirs and assigns by these presents that they, the said Sarah How, and Edward P. Pearson have not heretofore done or committed any act matter or thing whatsoever, whereby the premises hereby granted or any part thereof, is, are, or shall or may be impeached, charged or incumbered, in title estate, or otherwise howsoever. In testimony whereof, the said Sarah How, and Edward P. Pearson executors as aforesaid have hereunto set their hands and seals the day and year first herein mentioned.

S. HOW. [SEAL.]
EDWD. P. PEARSON. [SEAL.]

Signed, sealed and delivered by Sarah How, in the prescence of—
GERSHAM MOTT,
HORACE SMITH,
Justices of the Peace.

Signed sealed & delivered By Edward P. Pearson in the presence of—
J. C. GOODHART.
HENRY DEHUFF.

147 STATE OF NEW JERSEY,
County of Burlington, ss:

Be it remembered, that on this Twenty-second day of July in the year of our Lord eighteen hundred and thirty-five, personally appear before us, the subscribers two Justices of the Peace in and for the

County of Burlington, in the State of New Jersey, Sarah How, one of the grantors in the annexed Indenture now residing and being in the County and State aforesaid, Known to us to be the party grantor in the foregoing deed or instrument of writing and did sign, seal, deliver, execute and acknowledge the same in our presence and before us as and for her act and deed. All of which we, the said subscribers do hereby certify and make known. Given under our hands and seals the day and year first above written.

GERSHAM MOTT. [SEAL.]
HORACE SMITH. [SEAL.]

I, John R. Slack Clerk of the Court of Common Pleas in and for the County of Burlington in the State of New Jersey do hereby certify that Gersham Mott, and Horace Smith, now are Justices of the Peace in & for the County of Burlington in the State of New Jersey, and were such at the time of the execution and acknowledgment of the aforegoing deed or instrument of writing before them, that the names signed to the foregoing certificate are of their proper hand writing and that full faith and credit are and
148 ought to be given to all acts done and certified by them as such Justices. In Witness Whereof I have hereunto subscribed my hand and affixed the seal of the said Court this 29th day of July in the year of our Lord Eighteen hundred and thirty-five.

[Seal of the Court.]

JOHN R. SLACK. [SEAL.]

STATE OF PENNSYLVANIA,
County of Lebanon, ss:

Be it remembered that on the fifth day of August in the year of our Lord one thousand eight hundred & thirty-five personally appeared before us the subscribers two Justices of the Peace in and for the County of Lebanon in the State of Pennsylvania Edward P. Pearson one of the grantors in the annexed Indenture now residing and being in the County and State aforesaid, Known to us to be the party grantor in the foregoing deed, or instrument of writing and did sign, seal, deliver execute and acknowledge the same, in our presence and before us and for his act and deed. All of which we the said subscribers do hereby certify and make known. Witness our hands and seals the day and year first above written.

JB. GOODHART. [L. S.]
HENRY DEHUFF. [L. S.]

I, Adam Ritscher Prothonotary of the Court of Common Pleas of Lebanon County, in the State of Pennsylvania, Do Hereby certify that Jacob Goodhart, and Henry Dehuff, now are Justices
149 of the Peace in and for the County of Lebanon in the State of Pennsylvania, and were such at the time of the execution and acknowledgment of the aforegoing deed or instrument of writing before them; that the name signed to the aforegoing certificate are of their proper handwriting; and that full faith and credit are and

ought to be given to all acts done and certified by them as such Justices. In witness whereof, I have hereunto subscribed my hand and affixed the seal of the said Court this fifth day of August in the year of our Lord Eighteen hundred and thirty-five.

[Seal of Court.] ADAM RITSCHER, *Proth.*

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber W. B. 56, folio 449 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 12th, day of March A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

150 COMPLAINANTS' EXHIBIT X.

Filed March 30, 1908.

I Robert F. How of Burlington County and State of New Jersey being of sound mind and memory do make and declare this to be my last will and testament, that is to say,

First. I direct that all my just debts and funeral expenses be paid after which I give and bequeath to the following persons the following sums, Vizt.

To my brother Thomas Y How four thousand dollars. To my Sister Sarah How four thousand dollars. To my niece Mary Y Pearson four thousand dollars to my niece Elizabeth Pearson three thousand dollars. To my niece Angelia V. How three thousand dollars. To my nephew Thomas Y How Jr. one thousand dollars. To my niece Mary G. Gear one thousand dollars. To my nephew Robert F. How Jr. one thousand dollars. To my nephew Jacob R. V. How one thousand dollars. To my niece Sarah Curtis one thousand dollar- To my nephew Edward P. Pearson one thousand dollars. To my nephew William Pearson Jr. one thousand dollars. To my nephew Robert Pearson one thousand dollars. To my nephew Isaac Pearson one thousand dollars. To my nephew Henry Pearson, one thousand dollars. To my half Sister Martha Lowry five hundred dollars. To my half Sister Abigail Throckmorton five hundred dollars. And I hereby bequeath to my sister Mary A. Innsly an annuity of two hundred and fifty dollars to be paid to the said Mary A. Innsly by my executors hereinafter named each and every year during the natural life of the said Mary A. Innslee the aforesaid annuity hereby bequeathed to the said Mary A.
151 Inslee not to be subject to any abatement or deduction for or by reason of any want of assets either real or personal in the hands of my executors for the payment of any other legacies herein named and I do hereby authorize and require my executors hereinafter named to sell and dispose of all my estate both real and per-

sonal for the purpose of paying the before mentioned legacies and annuity. And I do hereby appoint as Executors of this my last will and testament my Sister Sarah How, my nephew Edward P. Pearson and my nephew Thomas G. How Jr.

In testimony whereof I have hereunto set my hand and seal this twenty eighth day of July in the year of our Lord one thousand eight hundred and thirty.

ROBERT F. HOW. [L. S.]

Signed, sealed and published by the said Robert F. How as his last will and testament in the presence of us who have subscribed our names as witnesses hereto in the presence of each other and of the said testator.

JOHN WATSON.
JOSEPH LEEDS.
SOLLOMAN MASON.

152 Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the exemplified copy of the original will of Robert F. How deceased, as filed and recorded in the office of the Register of Wills for the District of Columbia; being certified in due form to have been regularly admitted to probate and record in the Court of Common Pleas of the County of Burlington, State of New Jersey; also, that the said will was filed and recorded in the Supreme Court of the District of Columbia, holding a Probate Court, upon presentation of the said authentication, on the 20th day of October, A. D. one thousand eight hundred and eighty three.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 6th day of March, A. D. 1908.

[SEAL.] WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

153 COMPLAINANTS' EXHIBIT Y.

Filed March 30, 1908.

In the name of God, Amen

I William Dowling of the City of Washington in the District of Columbia being sick in body, and of sound and disposing memory and understanding, considering the certainty of death, and the uncertainty of the time thereof and being desirous to settle all my worldly affairs thereby being the better prepared to leave this world when it shall please God to call me hence do therefore make and publish this as my last will and testament as follows

First and principally I commit my soul into the hands of Almighty God and my body to the earth to be decently buried at the discretion of my executor to be named hereafter

I give and bequeath to my son William Dowling all my property of every description and nature whatsoever real and personal and mixed (subject nevertheless to the payment of my funeral expenses and all my just debts) to be held by him for and during his natural life, And after the death of my said son William Dowling, then I give & bequeath the same and every part thereof to his heirs at law forever

I hereby appoint my friend John J Joyce executor to this my last will and testament

In testimony whereof I have hereunto set my hand and seal this 15th day of October Anno Domini 1852

his
WILL'M x DOWLING. [SEAL.]
mark.

154 Signed sealed published and declared by William Dowling the above and within named as and for his last will and testament in the presence of us who at his request in his presence and in the presence of each other have subscribed our names as witnesses thereto

JAMES MAGUIRE.
ABRAHAM BUTLER.
N. CALLAN.

Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original will of Thomas Dowling deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid; and that the said will after having been duly proven, was, by order of the said Court, in accordance with the laws of the District of Columbia. admitted to probate and record on the 23rd day of October, A. D. one thousand eight hundred and fifty two.

I further certify, That said will was duly executed and proved agreeably to the laws and usages of the District of Columbia, and that I have compared the foregoing copy of said will with the
155 original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 6th day of March, A. D. 1908.

[SEAL.]

WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

156 COMPLAINANTS' EXHIBIT Z.

Filed March 30, 1908.

Lease. Recorded Jan. 15*th*, 1863.

Liber N. C. T. 7, folio 1 *et seq.*

Richard Reeder
to
Castalio Hosmer.

This indenture, made this thirteenth day of January in the year one thousand eight hundred and sixty three between Richard Reeder as guardian for Frances M. and Mary G. Dowling of the City of Washington, in the District of Columbia, of the first part, and Castalio Hosmer of the same place of the second part. Witnesseth, that the party of the first part hath letten, and by these presents doth grant, demise, and let, unto the party of the second part, all of the following described part of lot number twenty (20) in Square number two hundred and fifty four (254), situate and being in the City of Washington, in the District of Columbia, and bounded as follows, to wit: beginning at the north west corner of said lot and running thence on the South line of F Street, east twenty feet, thence South parallel with the west line of said lot, one hundred and fifty nine feet to the alley, thence west twenty feet to the South west corner of said Lot, thence North to the beginning, for the term of three years from the first day of February one thousand eight hundred and sixty three, at the yearly rent or sum of Seventy-five dollars, to be paid in equal quarter yearly payments. And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rent as herein
157 specified, namely; in quarter yearly payments on the first day of May, August, November, and February, in each and every year; and that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use thereof will permit; and the said party of the first part doth covenant that the said party of the second part on paying the said quarterly rent, and performing the covenants aforesaid, shall and may peaceably have and qui-tly hold and enjoy the said demised premises for the term aforesaid.

In witness whereof *we* have hereunto set *our* hands and seals this thirteenth day of January one thousand eight hundred and sixty three. RICHARD REEDER, *Guardian.* [SEAL.]

Sealed and delivered in the presence of—
GEORGE F. ENNIS.

I approve of the within lease,
MARY G. DOWLING.

U. S. Rev. Stamps, 30 cts.
C. H Jan. 15, 1863.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber N. C. T. 7, folio 1 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 11th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

158 COMPLAINANTS' EXHIBIT A 1.

Filed March 30, 1908.

Deed. Received October 28th, 1865. *Recorded December 20th*, 1865.

Liber R. M. H. No. 3, folio 350 *et seq.*

Frances M. Dowling
to
John F. Ennis.

This indenture, Made this eleventh day *day* of September, Eighteen hundred and sixty-five between Frances M. Dowling and Mary G. Dowling of the City of Baltimore, Maryland, (grand daughters of the late William Dowling senior, of the City of Washington, deceased being his heirs and also the heirs of William Dowling, Junior, deceased) and John F. Ennis of Washington aforesaid, (trustee under a decree of the Supreme Court of the District of Columbia, for the sale of the parcel of ground hereinafter described and referred to) of the second part: Witnesseth, that the said parties of the first part in consideration of the sum of one dollar current money to them paid by the said party of the second part before the execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said party of the second part and his heirs, all that part of lot numbered Twenty, in Square number Two hundred and Fifty-four, in the said City of Washington, which is mentioned in the proceedings of the cause in the said Court, in which the decree above named,
159 appointing said party of the second part trustee was passed, with the appurtenances and all their estate share and interest therein. To have and to hold the same unto the said party of the second part, his heirs and assigns in trust, to carry out decree and the sale made thereunder by him. In witness whereof the said

parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

FRANCES M. DOWLING. [SEAL.]
MARY G. DOWLING. [SEAL.]

Signed, sealed and delivered in presence of—
J. F. CALLAN.
M. P. CALLAN.

U. S. Stamp, $6.50.

DISTRICT OF COLUMBIA,
County of Washington, set:

I, John F. Callan Notary Public in and for the District and County aforesaid, Do hereby Certify that Frances M. Dowling and Mary G. Dowling, parties to a certain Deed dated the 11th day of September 1865 and hereto annexed, personally appeared before me in my County aforesaid, the said Frances M. and Mary G. Dowling being personally well known to me to be the persons who executed the said Deed, and severally acknowledged the same to be their act and deed. Given under my hand and Notarial seal this 11th day of September 1865.

[NOTARIAL SEAL.] JOHN F. CALLAN,
Notary Public, D. C.

160 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber R. M. H No. 3, folio 350 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this Office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

161 COMPLAINANTS' EXHIBIT A 2.

Filed March 30, 1908.

Deed. Recorded May 11, 1866.

Liber R. M. H. No. 10, folio 442 *et seq.*

John F. Ennis, Trustee,
to
Benjamin F. Isherwood.

This indenture, Made this eleventh day of May in the year One thousand eight hundred and sixty-six, between John F. Ennis of the City of Washington in the District of Columbia of the first part and Benjamin F. Isherwood of the same place of the second part. Whereas by a decree of the Supreme Court of the said District passed in a cause wherein Frances M. Dowling is complainant and Mary

G. Dowling is defendant the said party hereto of the first part was appointed trustee for the sale of the following piece or parcel of ground situate and being in the said City of Washington and known as the Weestern part of Lot numbered Twenty, in Square numbered two hundred and fifty-four, (254) having a front of nineteen feet, eleven inches and a half, on "F" Street north and running back with that width one hundred and fifty-nine feet to an alley thirty feet wide, with the appurtenances, for the purpose of division among the heirs *of* law of the late William Dowling. And whereas in pursuance of the authority contained in the said decree the said party hereto of the first part, advertised the said premises for sale at
162 auction on the 24th day of July last and on the day and at the place stated in said advertisement he offered the same for sale to the highest bidder, at which said sale the party hereto of the second part became the purchaser of the said premises, at the price or sum of six thousand, three hundred and forty-six dollars and seventy-five cents which said sale was duly reported to the said court and was confirmed provisionally by an order of the said court passed on the third day of October 1865, and finally by a further order on the 21st day of April last as by the proceedings in the said cause may fully appear. And the said party hereto of the second part having paid the purchase money & interest to the said party hereto of the first part as trustee as aforesaid. This indenture therefore witnesseth, that in consideration thereof and of the further sum of one dollar current money to the said party hereto of the first part in hand paid, by the said party hereto of the second part at or before the execution hereof, the receipt whereof is hereby acknowledged, he the said party hereto of the first part as such trustee hath granted, bargained, sold, aliened, released and confirmed and by these presents doth grant, bargain, sell, alien, release & confirm, unto the said party hereto of the second part, his heirs & assigns, all that piece or parcel of ground part of lot number twenty (20), in square numbered two hundred and fifty-four (254), in the said City of Washington above described, together with the rights and appurtenances to the same belonging and all the estate, right,
163 title and interest thereto & therein, legal and equitable, of the said parties to the said cause, and of said party hereto of the first part. To have and to hold the said hereditaments and premises hereinbefore described and referred to and every part and parcel thereof with the appurtenances unto and to the use of the said party hereto of the second part his heirs & assigns forever and to and for no other use or purpose whatsoever. In witness whereof, the said party hereto of the first part hath hereunto set his hand and seal the day and year first about written.

JOHN F. ENNIS, *Tr.* [SEAL.]

(A revenue stamp.)
(Stamp $6.50.)

Signed, sealed & determined in the presence of—$6.50/100 being previously affixed.

JOHN F. CALLAN.
M. P. CALLAN.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John F. Callan a Notary Public in and for the County & District above named duly commissioned and qualified do hereby certify that John F. Ennis party to a certain deed bearing date on the 11th day of May 1866, and hereto annexed, appeared personally before me in my County aforesaid on the date hereof he being personally well known to me as the person who executed the said deed
164 and he then & there executed the same in my presence, and acknowledged the same before me to be his act and deed.
Given under my hand & seal this 11th day of May A. D. 1866.

[NOTARIAL SEAL.] JOHN F. CALLAN,
Notary Public.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber R. M. H. No. 10, folio 442 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this Office this 11th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

165 COMPLAINANTS' EXHIBIT A 3.

Filed March 30, 1908.

Deed. Recorded 1st of November, 1852.

Liber J. A. S. 47, folio 31 *et seq.*

Ashton S. H. White
to
Benjamin F. Isherwood.

This Indenture, Made this Twenty-first day of September in the year of our Lord One thousand, eight hundred and fifty-two, between Ashton S. H. White and Annie G. White, his wife, heirs at Law of Abraham Bradley 3rd, of the City of Washington, in the District of Columbia and John S. Hatton and Mary A. Blinco of Fairfax County in the State of Virginia, of the first part, and Benjamin Franklin Isherwood, Chief Engineer in the United States Navy, of the second part: Witnesseth, that the said parties of the first part for and in consideration of the sum of One thousand and twenty-three dollars, current money of the United States to them in hand paid at or before the sealing and delivery of these presents by the said party of the second part, the receipt of which is hereby acknowledged, have and each of them, hath given, granted, bargained and sold, enfeoffed, conveyed, released and confirmed and by these presents do and each of them doth give, grant, bargain and sell, enfeoff, convey release and confirm unto the said party of the second part, his heirs and assigns forever, all the right, title, interest,

estate, claim and demand at law and in equity of the said parties of the first — of, in, and to the following described Lot, piece or parcel of ground and premises situate, lying and being in the
166 said City of Washington, to wit: Part of Lot numbered Twenty (20) in Square numbered Two hundred and fifty-four (254). Beginning for said part of said Lot Twenty, Twenty feet, from the North East corner of said Lot on F Street and running thence West on the line of F street Eleven feet, Eleven inches, thence South One hundred and fifty-nine feet to a Public alley in said Square, thence East by and with said alley Eleven feet, Eleven inches, thence North One hundred and fifty-nine feet to F Street and the place of beginning, together — the buildings, improvements, rights, privileges, appurtenances and all other hereditaments to the same belonging or in any way or manner appertaining and the remainder, reversions, rents, issues and profits thereof and all the right, title, interest and estate of them the said parties of the first part (at law and in equity) in and to the same. To have and to hold, the said described part of Lot numbered Twenty and premises with the hereditaments and appurtenances unto him, the said Benjamin F. Isherwood, party of the second part, his heirs and assigns forever to his and their sole use, benefit and behoof forever. And the said parties of the first part, for themselves, their heirs, executors and administrators by these presents covenant, promise and agree to and with the said Benjamin F. Isherwood, party of the second part, his heirs and assigns in manner following; to wit: That they are lawfully *siezed* in fee of the said premises and that they have good right — full power and lawful authority to sell and convey the same to him, the said Benjamin F. Isherwood, party of the second part in manner aforesaid that the premises are freed, clear of all incumbrances and that they and their heirs will forever
167 warrant and defend the same to him the said Benjamin F. Isherwood, party of the second part, his heirs and assigns forever, against all persons and claims whatsoever. And further, that they the said parties of the first part and their heirs, shall and will at any and all times hereafter, at the request and cost of the said Benjamin F. Isherwood, party of the second part, his heirs and assigns, make and execute any and every other Deed of assurance in law for the more sure and effectual conveyance of the said described part of Lot Twenty and premises, with the appurtenances to the said B. F. Isherwood, his heirs or assigns, that the said B. F. Isherwood his heirs and assigns, or his or their counsel learned in the law shall or may devise, advise or require. In testimony whereof, the said parties of the first part to these presents have hereunto severally subscribed their names and affixed their seals the day and year first hereinbefore written.

A. S. H. WHITE. [SEAL.]
ANNIE G. WHITE. [SEAL.]
JOHN S. HUTTON. [SEAL.]
MARY BLINCOE. [SEAL.]

Signed, sealed and delivered in the presence of—
T. C. DONN.
J. W. BECK.

DISTRICT OF COLUMBIA,
Washington County, To wit:

We, Thomas C. Donn and Joseph W. Beck, Justices of the Peace in and for the County and District aforesaid, Do Hereby Certify that As-ton S. H. White, John S. Hutton and Mary A.
168 Blinco, parties, Grantors to a certain Deed bearing date the twenty-first day of September 1852 and hereunto annexed, personally appeared before us in our County aforesaid, the said Ashton S. H. White, John S. Hutton and Mary A. Blinco being personally well known to us as the persons who executed the said Deed, and severally acknowledged the same to be their and each of this act and deed. Given under our hands and seals this twenty-first day of September A. D. 1852.

T. C. DONN, *J. P.* [SEAL.]
J. W. BECK, *J. P.* [SEAL.]

DISTRICT OF COLUMBIA,
County of Washington, To wit:

We, Thomas C. Donn and Joseph W. Beck, Justices of the Peace in and for the County and District aforesaid, Do Hereby Certify that, Mrs. Annie G. White, the wife of Ashton S. H. White a party, Grantor to a certain Deed bearing date on the twenty-first day of September 1852 and hereto annexed, personally appeared before us in our County aforesaid, the said Annie G. White being personally well known to us as the person who executed the said Deed and being by us examined privily and apart from her husband and having the Deed aforesaid fully explained to her, she the said Annie G. White acknowledged the same to her act and deed and declared that she had willingly, signed, sealed and delivered the same and that she
169 wished not to retract it. Given under our hands and seals this twenty-first day of September A. D. 1852.

T. C. DONN, *J. P.* [SEAL.]
J. W. BECK, *J. P.* [SEAL.]

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber J. A. S. No. 47, folio 31 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this Office this 12th day of March, A. D. 1908.

[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

170 COMPLAINANTS' EXHIBIT A4.

Filed March 30, 1908.

Liber G. No. 17, fol. 299 *et seq.*

Samuel Blodget
to
Edward Frethey.

At the request of Edward Frethey the following Deed was recorded the Seventh day of October Eighteen hundred and one to wit

This indenture Made the fourteenth day of April in the year of our Lord one thousand eight hundred and one, Between Samuel Blodget of Philadelphia and State of Pennsylvania of one part and Edward Frethy of the City of Washington in the Territory of Columbia of the other part. Witnesseth that the said Samuel Blodget for and in consideration of the payment of the rent and performance of the covenants hereinafter mentioned on the part of the said Edward Frethy his executors administrators and assigns to be paid and performed. Hath devised granted leased and to farm let, and by these presents Doth demise, grant lease and to farm let unto the said Edward Frethy his executors administrators and assigns. All that lott of nineteen feet eleven inches and a half West front on F Street north running in depth one hundred & fifty nine feet to an alley which Lott is part of Lott number Twenty, in square No. Two hundred and fifty four in the City of Washington. Together with all improvements and alleys, ways, or privileges belonging to said Lott of ground, unto the said Edward Frethy his executors administrators and assigns from this the fourteenth day of April above mentioned for and during the full term of ninety nine years
171 from thence next ensuing, and fully to be completed and ended, yielding and paying therefor, yearly, and every year, during the said term, unto the said Samuel Blodget his heirs and assigns the yearly rent or sum of forty dollars current money of the United States, free and clear of all taxes assessments, or public dues now or hereafter to be laid taxed or assessed on said demised premises in annual payments on said fourteenth day of April on each and every year, the said term of ninety nine years to be renewable forever, provided always and it is the true intent and meaning of these presents that if it shall happen, that if the said yearly rent shall be in arrear and unpaid by the space of Forty days next after the time on which the same is above reserved to be paid then it shall and may be lawful to and for the said Samuel Blodget his heirs or assigns unto the said demised premises, or any part thereof in the name of the whole to re-enter and the same to have again re-possess occupy and enjoy as in his or their former estate until all such arrearages of rent with legal interest thereof and all and every cost charge and ex-

penses incurred by the said Samuel Blodget his heirs or assigns by reason of the non-payment of said rent shall be fully satisfied and paid or make distress thereof at his or their option, and also if the same yearly rent shall be in arrear, and unpaid, by the space of sixty days next after the time on which the same is above reserved to be paid, then it may be lawful to and for the said Samuel Blodget his heirs and assigns unto the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again re-possess, occupy, and enjoy, as in his or their former
172 estate and then in such case this indenture and every clause matter and thing contained shall from henceforth be utterly void and of no effect, and the said Edward Frethy for himself his executors, administrators and assigns doth covenant and agree to and with the said Samuel Blodget his heirs and assigns well and truly to pay the within mentioned reserved yearly rent of forty dollars at any time before within mentioned; and also that he the said Edward Frethy his executors administrators and assigns shall and will erect or cause to be erected a good building of at least twelve feet square to be completed and tenantable within the present year at farthest which if not complied, with he the said Edward Frethy binds himself, his heirs, executors and administrators, to satisfy and pay unto the said Samuel Blodget his heirs and assigns the damages which shall or may accrue to him or them for such non-compliance and moreover in case *of* a defalcation shall be made in payment of the rent as before within mentioned, then and in such case the improvements which shall be made on the above demised premises shall belong to the said Samuel Blodget for himself his heirs and assigns and the said Samuel Blodget for himself his heirs and assigns doth covenant promise and agree to and with the said Edward Frethy his heirs executors administrators and assigns that he the said Samuel Frethy his heirs or assigns at any time or times during the continuance of this present or future demise, or at the request and at the proper costs and charges of the said Edward Frethy his heirs or assigns and on his or their tending in payment of
173 the said Samuel Blodget his heirs or assigns the principal sum of five hundred dollars shall and will make — execute a deed in fee simple for said Lot*t* and premises within described to the said Edward Frethy his heirs and assigns forever, with clauses of general warrant*ee* as he or they may judge requisite. It is further agreed that the said Edward Frethy his heirs or assigns may pay unto the said Samuel Blodget his heirs or assigns any proportion of the principal sum of five hundred dollars not less than one twentieth of that sum and for so much of the principal of five hundred dollars as shall be paid; so much in proportion of the rent shall be reduced or les-ened, reserving unto the said Samuel Blodget his heirs or assigns all penalties and forfeitures within before mentioned until the whole sum of the five hundred is paid when the whole rent shall cease and the property become the sole right of the said Edward Frethy his heirs or assigns. In witness whereof the said parties

have hereunto interchangeably set their hands and seals the day and year within mentioned.

SAM BLODGET. [SEAL.]
EDW. FRETHY. [SEAL.]

Signed, sealed and delivered in the presence of
JOHN STICKNEY.
JAMES DOUGHERTY.

TERRITORY OF COLUMBIA,
Washington County:

173½ Personally appeared before the subscriber one of the Commissioners of the City of Washington appointed by the president of the United States by virtue of an act of Congress for establishing the temporary & permanent seat of the Government of the United States the within named Samuel Blodget and Edward Frethy and acknowledged the foregoing Instrument to be their act & deed and delivered for the uses & purposes therein mentioned. Acknowledged this 14th day of April 1801.

WILLIAM THORNTON.

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber G. No. 17 Fol. 299 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 13th day of March, A. D. 1908.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds.

174 COMPLAINANTS' EXHIBIT A 5.

Filed March 30, 1908.

Decree.

Filed July 5, 1865. R. J. Meigs, Clerk.

No. 455. In Equity.

DOWLING
vs.
DOWLING.

The above cause standing ready for hearing and the written agreement of counsel for complt. & deft. consenting to a Decree for the sale of the property mentioned in the said proceedings having been filed, the proceedings were read and considered.

It is thereupon on motion of complainant's counsel, this fifth day of July 1865, ordered, adjudged and decreed, that *that* the real estate mentioned in the said proceedings be sold, and that John F. Ennis be and he is hereby appointed Trustee to make such sale, and that the course and manner of his proceedings shall be as follows:

He shall first file in the Clerk's Office of this Court, a bond to the United States, executed by himself with two sureties, to be approved by one of the Judges of this Court, in the penalty of Six Thousand Dollars, conditioned for the faithful performance of the Trusts reposed in him by this Decree or which may be reposed in him
175 by any future order or decree in the premises. He shall then proceed to make sale of the said premises, after having given at least two weeks' notice, in some newspaper published in the City of Washington, D. C., and such other notice as he may think proper, of the time, place and terms of said sale.

The terms of sale shall be as follows, One Third cash, the balance in six and twelve months.

The deferred payments to bear interest from the day of sale, and to be secured by the notes of the purchaser, or purchasers, with good and sufficient surety to be approved by the Trustee. As soon as convenient after such sale, the Trustee shall return to this Court, a full and fair account of said sale, with an affidavit of the truth thereof annexed.

On the ratification of the said sale, and upon the full payment of the purchase money and interest, the Trustee shall convey to the purchaser or purchasers, his or their heirs, the said property to him or them sold, free clear and forever discharged of the parties to this Cause, or persons claiming by from or under them.

It is further decreed that the said purchaser or purchasers shall have the privilege of paying the whole of the said purchase money in cash.

By order of the Court.

A True Copy.

Test:

[SEAL.] J. R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM,
Ass't Clerk.

176 COMPLAINANTS' EXHIBIT A 6.

Filed March 30, 1908.

Bill.

Filed June 22, 1865.

In the Supreme Court of the District of Columbia.

In Equity. No. 455.

To the Hon. the Judges, &c.:

The Bill of Complaint of Frances M. Dowling, now residing in the City of Baltimore, Maryland, respectfully represents. That your *orator* and her sister Mary G. Dowling are seized as tenants in common of a certain piece of ground situated in the City of Washington in the District aforesaid, viz:

Part of Lot numbered Twenty (20) in square numbered Two Hundred and fifty-four (254), being the western part of said lot fronting Nineteen feet 11½ inches on F Street, North, running back one hundred and fifty-nine (159) feet to an alley thirty feet wide.

That the said Mary G. Dowling is an infant under the age of twenty-one years.

Your oratrix further represents that the said lot is the only real estate owned by them. That the said lot is a very valuable one, but that your complainant and her said sister are poor and wholly without means to erect any building upon the said lot and she therefore charges that it will be for the interest and advantage both of your oratrix and the said defendant that the said real estate
177 should be sold and the proceeds divided amongst herself and said sister.

But inasmuch as the said Mary G. Dowling is an infant, your oratrix is advised that the sale of the said premises cannot be had, without the intervention of your Honorable Court.

Your oratrix therefore prays that a Guardian *ad litem,* may be appointed for the said infant, who shall for and in her name make answer to the said Bill, and that your Honors may pass a Decree, for the sale of the said premises, and the proceeds divided amongst your oratrix and the said defendant according to their respective interests therein. And that your oratrix may have such other and further relief in the premises as may to your Honors appear just and equitable.

JOHN F. ENNIS,
Sol'r for Complainant.

A true copy.
Test:

J. R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM,
Ass't Clerk.

178 COMPLAINANTS' EXHIBIT A 7.

Filed March 30, 1908.

Decree.

May 18, 1847.

In Chancery. No. 478.

WILLIAM HAYMAN & MARY ELIZ'TH HAYMAN, Comp'ts,
and
ANNA, ADELAIDE, JULIA, CATHERINE, & SAMUEL HAYMAN, Def'ts.

This cause having been set for hearing by consent and now coming on to be heard, on the Bill, answers and exhibit, and on the Report of the Auditor made and filed pursuant to the order of reference made to him on the 5th of May instant; and the Court having considered the same, and being satisfied by the said Report, that it would be for the benefit and advantage of all the parties in the said cause, that the real estate in the Bill of Complaint mentioned should be sold, and the proceeds distributed among said complainants and defendants; it is therefore this 18th day of May, 1847, ordered and decreed by the Court, that the real estate in the Bill mentioned (being part of lot number twenty in square number two hundred and fifty four in the City of Washington, fronting twenty feet on F 178½ street and extending back of equal width one hundred and fifty nine feet with the improvements thereon), be forthwith sold for distribution of the proceeds thereof among the said complainants and defendants according to their rights; and that for that purpose William Redin be and he is hereby appointed Trustee, who shall give Bond to the United States in the penalty of two thousand dollars for the due and faithful execution of the trust hereby reposed in him, with security to be approved by the Court or one of the Judges thereof; that the said Trustee shall sell the said premises at public auction on a notice of fourteen days to begin at least twice a week in the National Intelligencer, in which notice the said property shall be described, and the terms, time and place of sale specified; that the Trustee make the said sale on the following terms—one fourth cash and the residue at six, twelve and 18 months to be secured by the purchaser's Bonds with security bearing interest from the day of sale; that the Trustee report to this Court his proceedings under this decree, with an affidavit of the truth of the Report, and of the fairness of the sale; and upon the ratification thereof by the Court, and full payment of the purchase money, he shall convey the said premises to the purchaser in fee; and that he shall bring the purchase money into Court to be disposed of as the Court shall direct by future order in the premises; saving to the said infant de-

fendants the right to show cause as and within the period prescribed by the statute in such case made and provided.

By order of the Court.

Test:

W. BRENT.

A True Copy.

Test:

[SEAL.] J. R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM,
Ass't Clerk.

179 EXHIBIT No. A 8.

Filed June 15, 1908.

Bill.

Filed 5 May, 1847.

WM. HAYMAN & AL.
v.
ANNA B. HAYMAN and Others.

478, Rules 4.

To the Honorable the Judges of the Circuit Court of the District of Columbia for Washington County, in Chancery:

Your orator William Hayman and oratrix Mary Elizabeth Hayman show to your Honors, that on the third day of July in the year eighteen hundred and thirty, a certain Mary Daugherty of the City of Washington, being seized in fee simple of and in a certain portion of Lot number twenty in square number two hundred and fifty four in the said City, the said part fronting twenty feet on F Street and extending back of equal width one hundred and fifty nine feet, and containing 3180 square feet, with the frame tenement thereon, now occupied by John Byrne, made her last Will and Testament bearing date the day aforesaid, duly executed and attested, and thereby gave the said premises unto William Hayman, the Father of your orator, for his natural life, and after his death unto his children and their heirs for ever; as by a copy of the said Will here-
180 with filed and prayed to be taken as a part of this Bill may appear, marked Exhibit A. Your Orator and Oratrix further show that shortly after making said Will, the said Mary Daugherty departed this life without altering or revoking the same. That the said Father of your Orator and Oratrix enjoyed the said premises during his life; and that he died in September 1842, leaving the following children, namely: your Orator, William and Oratrix Mary Elizabeth Hayman, and also Anna Hayman, Adelaide Hayman, Julia Hayman, Catherine Hayman and Samuel Hayman, all of whom except your Orator & Oratrix are infants under the age of

twenty one years, and who are now entitled to the said premises as devisees in remainder under said will. Your Orator and Oratrix pray that their said named Sisters and Brother may be made Defendants to this Bill. And they further state that it will be for the advantage as well of the said infant defendants as of your Orator and Oratrix that the said premises should be sold and the proceeds divided and distributed among them, for these among other reasons; namely: that the lot is very small and incapable of partition among them; that there is nothing upon it but a small tenement, which is very old, and very much out of repair, the rent of which for some time past has not done more than pay the taxes, and keep the premises in tenantable order; that the rent now paid is not more than six dollars per month, which, after paying taxes and repairs, and other expenses would leave a very inconsiderable sum for division among the seven heirs; that all of the said Defendants except two
181 are still very young, have to be educated, and are entirely destitute of the means to effect it, and have no friends or connections able to afford it; and that the share of each in the purchase money of the said premises would be of much greater advantage to them than the said property is or ever will be. In consideration whereof and forasmuch as your Orator and Oratrix cannot have the relief they seek, in consequence of the minority of said Defendants, except through the aid of your honorable Court To the end therefore that said Defendants may truly and fully answer the several matters herein set forth; that the said premises may be sold by a Trustee to be appointed by your Honors; that a commission may issue to take the answers of said infant defendants; and that such other relief may be granted as the nature of the case may require; may it please your Honors to grant the United States writ of subpœna directed to the said Defendants, commanding them to be and appear and so forth, and your Orators will pray &c.

W. REDIN,
For Compl't.

EXHIBIT A.

The Will of Mary Daugherty.

(Copy.)

In the name of God, Amen—I Mary Daugherty of the City of Washington, being in low health, but of sound & disposing mind & memory—Do make and publish this as my last Will & testa-
182 ment, hereby revoking & annulling all wills heretofore made by me—

In the first place I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my Executor hereinafter named—

I give and devise to *William Hayman of George Town* in the District of Columbia during his natural life, and after his death, *to his children* and their heirs forever my House & Lot numbered

twenty in Square two hundred & fifty four, on F street in the City of Washington—

And, it is my will and desire, that my grand neice Rathey Ann Clarke, who now lives with me, shall have & possess during her natural life my two brick House- & the ground or lots on which they stand, being lot numbered twenty seven in square two hundred and fifty four, on 13th Street in the City of Washington, and after her death, that the same shall be equally divided among her children & their issue but in case of her dying without leaving a child or children, or the issue of any such child or children, then I give & devise the said two house- & lot- to Mrs. Margaret Rowan for her natural life, and to her children forever.

It is my will & desire, that as soon after my decease as conveniently may be the whole of my Household furniture & other personal property, shall be sold by my Executor, (as he may deem most beneficial) on a credits or cash, the proceeds of which, I hereby give to my aforesaid grand neice Rathey Ann Clarke to be applied by my Executor for the maintenance & education of my said grand
183 neice—I wish her to be put to board & school with Mr. McCloud one year—she will be fourteen years of age in January next.

My funeral expenses I direct to be paid by my Executor out of the money that I shall leave in my House believing as I do, that their will be enough for that purpose.

I hereby constitute & appoint my friend *William Hayman of Georgetown Executor of* this my last will & Testament.

In testimony of which, I have hereunto set my hand & Seal this *3d of July in the year 1830*—

MARY DAUGHERTY. [SEAL.]

Signed, sealed & published by the said Testatrix as her last Will & testament, in our presence, to which we have at her request in her presence & in the presence of each other subscribed our names as witnesses thereto.

JOHN McLEOD.
ROB'T MILLER.
GEO. LAMB.

True Copy.
Test: ED. N. ROACH, *Reg. Wills.*
April 27, 1847.

184 *Order of Reference.*

5 May, 1847.

In Chancery.

WILLIAM HAYMAN & AL.
v.
ANNA B. HAYMAN & Others.

It is this fifth day of May 1847 ordered by the Court that this cause be and the same is hereby referred to the Auditor of this Court

with directions to enquire, whether it will be for the benefit and advantage of the parties in the above cause, and particularly of the infant defendants, to sell the real estate in the Bill of complaint mentioned, for distribution of the proceeds thereof among the said parties and that he report his opinion and the reasons therefor to this Court.

By order of the Court.

W. BRENT.

Commission and Return and Answer.

Filed 15 May, 1847.

DISTRICT OF COLUMBIA,
Washington County, To wit:

185 The United States of America to Nicholas B. Lane, William Wallace, Alexander L. Irwin, Walter Beatty, and John F. Denny, Greeting:

Whereas William Hayman and Mary Elizabeth Hayman have filed their Bill of Complaint in the Circuit Court of the District of Columbia sitting as a Court of Equity for Washington County against Anna Hayman, Adelaide Hayman, Julia Hayman, Catherine Hayman and Samuel Hayman; but forasmuch as they are infants under the age of twenty one years and cannot answer this Bill nor defend this suit without a guardian assigned in this behalf Know ye therefore that we have given you or any three of you full power and authority in pursuance of the special order of the Court to assign and appoint a Guardian for the said infant defendants and to take the answer of said infant defendants by such Guardian to said Bill; therefore we command you or some three of you that at such certain day and place as you shall appoint you go to the said infant defendants if they cannot come to you, and assign and appoint a Guardian for said infant & take the answers of said infants by said Guardian upon his or her corporal oath to be administered by you, the said answer to be plainly written; and when you shall have taken the same, you are to send the same closed up under your seal together with your Certificate of your having assigned and appointed such Guardian as aforesaid and this writ to the said Court. Witness my hand and the seal of the said Court this 29th April 1847.

[SEAL.] WM. BRENT, *Clk.*

29 Ap., 1847.

186 *Return to Within Writ.*

To the Honorable the Judges of the Circuit Court of the District of Columbia for the County of Washington:

We Nicholas B. Lane Alexander L. Irwin & John F. Denny Commissioners named in the foregoing writ do hereby certify that in

pursuance of the authority therein given us we did go to the residence of Mary Gettys in the County of Franklin in the State of Pennsylvania on the fourth day of May 1847 and did then and there with the consent of Anna Hayman, Julia Hayman, Catherine Hayman and Samuel Hayman, four of the infant defendants within named, appoint and assign Mary Gettys to be their Guardian, the said infant defendants being then present, and did take their answer by their Guardian aforesaid to the Bill of Complaint within mentioned on the said Guardian's corporal oath by us duly administered which answer we do hereby and herewith return with the said writ under our hands and seals to the said Court Given under our hands and seals this fourth day of May in the year 1847.

N. B. LANE. [SL.]
A. L. IRWIN. [SL.]
JNO. F. DENNY. [SL.]

187 *The answer of Anna Hayman, Julia Hayman, Catherine Hayman, and Samuel Hayman, infant Defendants, by their Guardian, Mary Gettys, to the Bill of Complaint of William Hayman & Mary Elizabeth Hayman.*

These Defendants, answering as aforesaid, say that they have been informed and therefore admit that Mary Daugherty made her Will, and, as appears from a copy hereof filed with said Bill, devised the premises in the Bill mentioned to "William Hayman of George Town" (their deceased Father) for life, with remainder to "his children and their heirs", these Defendants, the Complainants, and their Sister Adelaide. These Defendants had always been under the belief that the premises in question had been devised solely to their said Brother William, and it is only very recently that he and they have learned otherwise. They admit further that it would be for the advantage of all of them that the said premises should be sold and the proceeds divided among them; and they request, as far as they have any interest therein, that the same may be done under the order and direction of the Court. They also admit the death of said Testatrix and Wm. Hayman, the former without altering or revoking said Will.

Sworn to by Mary Gettys the Guardian of said Anna, Julia, Catherine and Samuel Hayman infant defendants above named this 4th day of May 1847, before us.

N. B. LANE,
A. L. IRWIN,
JNO. F. DENNY,
Commissioners, &c.

MARY GETTYS,
Guardian of said Infant Defendants.
MARBURY,
For Def't.

188 *Writ, Return to Writ, and Answer.*

Filed 15 May, 1847.

DISTRICT OF COLUMBIA,
Washington County, To wit:

The United States of America to Henry Addison, Greeting:

Whereas William Hayman and Mary Elizabeth Hayman have filed their Bill of Complaint in the Circuit Court of the District of Columbia sitting as a Court of Equity for Washington County against Anna Hayman Adelaide Hayman, Julia Hayman, Catherine Hayman and Samuel Hayman; but forasmuch as they are infants under the age of twenty one years and cannot answer this Bill nor defend this suit without a guardian assigned in this behalf, and the said Adelaide Hayman residing within the County and District aforesaid Know ye therefore that we have given you full power and authority in pursuance of the special order of the Court to assign and appoint a Guardian for the said infant Defendant Adelaide Hayman and to take her answer by such Guardian to the said Bill; therefore we command you that at such certain day and place as you shall appoint you go to the said infant Defendant if she cannot come to you, and assign and appoint a Guardian for her and take the answer of said infant by said Guardian upon his or her corporal oath to be administered by you, the said answer to be plainly written; and when you shall have taken the same, you are to send the same closed up under
your seal together with your certificate of your having as-
189 signed and appointed such Guardian as aforesaid and this writ to the said Court. Given under my hand and the seal of the said Court this 13th day of May 1847.

[SEAL.] W. BRENT, *Clk.*

Return.

To the honorable the Judges of the Circuit Court of the District of Columbia for the County of Washington:

I Henry Addision commissioner named in the aforegoing writ do hereby certify that in pursuance of the authority therein given to me I went to the residence of Miss L. S. English in the County above named in George Town, the present home of the said Adelaide Hayman within named, on this 15th day of May instant and did then and there with the consent of the said Adelaide Hayman the infant defendant appoint and assign George Cover to be her Guardian the said infant defendant being then present and did take her answer by her Guardian aforesaid to the Bill of Complaint within mentioned on the said Guardian's corporal oath by me duly administered, which answer I do hereby and herewith return with the said writ under my hand and seal to the said Court. Given under my hand and seal this 15th day of May in the year 1847.

H. ADDISON. [SL.]

190 *The separate answer of Adelaide Hayman, Infant Defendant, by her Guardian, George Cover, to the Bill of Complaint of William Hayman and Mary Elizth Hayman.*

This Defendant answering as aforesaid says that she has been informed and therefore admits that Mary Daugherty made her Will, and, as appears from a copy thereof filed with said Bill, devised the premises in the Bill mentioned to William Hayman of George Town, her deceased Father, for life, with remainder to his children and their heirs, this Defendant and her Brothers and Sisters parties complainant and defendant named in said Bill. This Defendant had always been under the belief that the premises in question had been devised solely to her said Brother William, and it is only very recently that she and her said Brothers and Sisters have learnt otherwise. She admits further that it would be for the advantage of all of them that the said premises shod be sold and the proceeds divided among them; and she requests, as far as she has any interest therein, that the same may be done under the order of the Court. She admits also the death of her Father Wm. Hayman, and also of said Mary Daugherty without altering or revoking said Will.

Sworn to by George Cover the Guardian of the said Adelaide Hayman infant defendant above named this 15th day of May 1847, before me.

H. ADDISON.

GEO. COVER,
Guardian of Adelaide Hayman.
MARBURY,
For Defendant.

191 *Auditor's Report.*

Filed 17 May, 1847.

Circuit Court of the District of Columbia for the County of Washington. In Chancery.

WM. HAYMAN & AL.
v.
ANNA HAYMAN & AL.

In this cause in obedience to the order of the Hon. Court of the 5th of May Inst., the auditor has made the examinations therein provided for and respectfully submits the following report.

He has inspected the property referred to in the Bill, examined the tenant and Wm. Redin Esqr and has assisted his judgment in regard to the value of the property by reference to the assessment books of the City of Washington and the views of several intelligent citizens acquainted with the property.

The property in question consists of a part of Lot No. 20 in Square No. 254 of the City of Washington with the improvements. The

property fronts 20 feet on the south side of F street north—and is estimated to extend back 159 feet. The part of lot is assessed as containing

3180 Square feet at 25 cts. pr. foot, making.....	$795
The improvements are assessed at.....	500
	$1,295

The improvements consist of a small two-story frame front building, of one room to each story, and a back building of brick
192 of one story containing a small room, with cellar under it. They are old and of little value and the Auditor supposes that the above valuation of improvements on the City assessment books to be much too high. He values the entire property at not exceeding—$1000. The property is under the rent of $6 per month and the rent to July 1 next will be absorbed for repairs heretofore authorized and made; the subsequent income of the property from the above rents will be subject to deductions for annual taxes at the probable rate of 75 cts. pr. $100 of assessed value, insurance, if made, further repairs and other incidental expenses.

It appears from the testimony of Wm. Redin Esq. that the premises constitute the only property of the parties to the suit; & that three of the defendants are yet very young and uneducated, and that they have no friends or connexions on whom they can rely for assistance therein.

With reference to the inability of the parties to improve the property by better buildings promising an increased revenue, and the progressive decay of the existing buildings, the Auditor is of the opinion that the value of the property might be well invested for the parties in a manner more for their advantage and that in this view that it would be for the interest and advantage of the parties that the same should be sold. But with reference to the necessities of the parties for maintenance & education, he supposes that the propriety of this conclusion is materially strengthened, as the clear annual income, not exceeding $7 or $8 for each party, is wholly
193 inadequate for the object.

Respectfully submitted,

CLEMENT COX, *Aud'r.*

May 17, 1847.

Trustee's Report.

Filed 20th Octo., 1847.

In Chancery.

WILLIAM HAYMAN & Others
agt.
ANNA HAYMAN & Others.

The subscriber Trustee in the above cause respectfully reports, that pursuant to the decree of the Court, pronounced in the said

cause on the — day of —— last, he exposed the premises mentioned in the proceedings of this cause, and in the annexed advertisement, for sale at auction on the 7th day of June last, at 4 o'clock in the afternoon, in front of the premises, (the same having been previously advertised as directed by the said decree, as appears from the Certificate of the printer hereto annexed). That at the said sale the said premises were purchased by John Byrne (he being the highest bidder for the same) at the price or sum of Nine hundred and sixty dollars; that the said purchaser hath complied with the terms of sale; and the same was in all respects fairly conducted.

He prays the passage of an order for the ratification of the
194 said sale, and conveyance of the property to the purchaser, upon the final ratification thereof and full payment of the said purchase money.

W. REDIN, *Trustee.*

19 Oct'r, 1847.

Wm. Redin appeared personally in open Court this 20th day of October 1847 and made oath in due form of law that the matters stated in the above Report are true to the best of his knowledge and belief.

Test:

W. BRENT, *Cl'k.*

By B. Homans, Auctioneer.

Public Sale.—By virtue of a decree of the Circuit Court of the District of Columbia for Washington County, made in a cause wherein William and Mary Elizabeth Hayman are complainants, and Anna, Adelaide, Julia, Catherine, and Samuel Hayman, are defendants, I will sell at auction, on the 7th day of June next, at 4 o'clock, in the afternoon, in front of the premises, the following parcel of ground, situate in the city of Washington, to wit: Part of Lot No. 20, in square No. 254, fronting 20 feet on F street, and extending back of equal width 159 feet, containing 3,180 square feet, with the frame tenement thereon now occupied by John Byrne.

Terms: One-fourth cash, and the residue at six, twelve, and eighteen months, with interest from the day of sale, to be
195 secured by the purchaser's bonds, with security, and a deed of trust on the premises. On the payment of the purchase money, and ratification of the sale, I will convey to the purchaser all the right and title of the complainants. If the terms of sale be not complied with within three days from the day of sale, the premises will be resold, on five days' notice, at the risk and cost of the defaulting purchaser. All deeds at the purchaser's cost.

W. REDIN, *Trustee.*
B. HOMANS, *Auctioneer.*

may 19-2aw

OFFICE OF THE NATIONAL INTELLIGENCER,
WASHINGTON, *July* 23, 1847.

We hereby certify that the advertisement of which the annexed is a copy, was published in the National Intelligencer 2 a week till 7th June 1847 commencing on the 19th of May 1847.

GALES & SEATON,
Per J. T COYLE.

* * * * * * *

The above sale took place as advertised and on the terms and conditions therein mentioned.

The property was sold to John Byrne, he being the highest bidder, for		$960.00
Charges: Commission	$11.60	
Advertising (twice)	6.87	
Bellman (twice)	2.00	
		20.47
		$939.53

196 E. E.
Washington, June 11th, 1847.

B. HOMANS, *Auct'r.*

W. Redin, Esq., Trustee, to B. Homans, Dr.

1847.			
April 26.	To advertising Hayman's Lot		2.62
	" Bellman		1.00
June 7.	" Advertising do. do.		4.25
"	" Commission on sale		11.60
"	" Bellman		1.00
			$20.47

Received payment.

Order of Ratification Nisi.

Circuit Court of the District of Columbia, County of Washington, October Term, 1847. In Chancery.

WILLIAM HAYMAN & MARY ELIZ'TH HAYMAN, Compl'ts,
agt.
ANNA HAYMAN, ADELAIDE HAYMAN, JULIA HAYMAN, CATHERINE HAYMAN, and SAMUEL HAYMAN, Def'ts.

W. Redin Trustee in the above cause having reported that pursuant to the decree of this Court, he exposed to sale on the
197 7th June last, the following parcel of ground situate in the City of Washington; to wit: part of Lot No. 20 in square No. 254, fronting 20 feet on F street and extending back of equal width

159 feet, and containing 3180 square feet with the frame tenement thereon; that at such sale John Byrne was the highest bid-er for the same and became the purchaser thereof, at the price of $960; and that the said purchaser had complied with the terms of sale

It is therefore this 22nd day of October 1847 ordered by the Court, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the first day of next term, provided a copy of this order be inserted once a week for three weeks prior to said day in the National Intelligencer.

By order of the court.

Decree Ratifying Sale.

Filed Nov. 2, 1883. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

Chancery Rules 4, No. 478.

WM. HAYMAN
vs.
ANNA HAYMAN ET AL.

On motion of John B. Larner, solicitor for Caleb C. Willard the present owner of the premises described in these proceedings, being part of original Lot 20 in Square No. 254, and it appearing to
198 the Court that on the 18" day of May 1847, by a decree of the Circuit Court of the District of Columbia the late Wm. Redin was appointed trustee to sell said described property at public auction, that on the 20th day of October 1847 the said trustee reported that said property had been sold on the 7th day of June 1847 to one John Byrne for the sum of $960, and on the 22nd day of October 1847, the said Court did ratify said sale unless cause to the contrary be shown on or before the next term of the Court then ensuing, and it further appearing to the Court that said sum of $960 was paid by the said Byrne & distributed under the order of the Court, and that no exceptions whatever have ever been filed either to the report of the Trustee or to the Auditor of the Court, it is therefore this 2nd day of November, A. D. 1883, ordered, adjudged & decreed that said sale, be and the same is hereby finally ratified & confirmed.

A. B. HAGNER,
Asso. Justice.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 19, both inclusive, to be true and correct copies of the origi-
199 nals in Cause No. 478, Chancery Rules 4, wherein William Hayman *et al.* are Complainants and Anna B. Hayman and

Others are Defendants, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of June, A. D. 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

200 EXHIBIT No. A 9.

Filed June 15, 1908.

In the name of God Amen—

I Mary Dougherty of the City of Washington, being in low health, but of sound & disposing mind & memory—Do make and publish this as my last Will & testament—hereby revoking & annulling all Wills heretofore made by me—

In the first place I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my Executor herein after named—

I give and devise to William Hayman of George Town in the District of Columbia, during his natural life; and after his death, to his children and their heirs for ever, my House & Lot numbered twenty in square two hundred & fifty four, on F Street in the City of Washington—

And, it is my Will and desire, that my grand Niece Ruthy Ann Clarke, (who now lives with me) shall have & possess during her natural life, my two brick Houses & the ground or lots on which they stand, being lot numbered twenty seven in square two hundred and fifty four, on 13th Street in the City of Washington, and after her death, that the same shall be equally divided among her children & their issue—but in case of her dying without leaving a child or children, or the issue of any such child or children—then I give & devise the said two houses & lot to Mrs. Margaret

201 Rowan for her natural life, and to her children for ever

It is my will & desire, that as soon after my decease as conveniently may be, the whole of my Household furniture & other personal property, shall be sold by my Executor, (as he may deem most beneficial) on a credit, or for Cash—the proceeds of which, I hereby give to my aforesaid grand Niece Ruthy Ann Clarke, to be applied by my Executor for the maintenance & education of my said grand Niece—I wish her to be put to board & school with Mr. McCloud one year—she will be fourteen years of age in January next—

My funeral expenses I direct to be paid by my Executor out of the money that I shall leave in my House, believing as I do, that there will be enough for that purpose—

I hereby constitute & appoint my friend William Hayman of George Town, Executor of this my last Will & Testament—

In testimony of which, I have hereunto set my hand & seal, this 3d day of July in the year 1830—

MARY DOUGHERTY. [SEAL.]

Signed, Sealed & published by the said Testatrix, as her last will & testament in our presence, to which we have at her request, in her presence & in the presence of each other, subscribed our names as witnesses thereto—

JOHN McLEOD.
ROB'T MILLER.
GEO. LAMB.

202 This instrument of writing, I wish to be taken as a codicil to my last will and testament, dated July 3d 1830—

Whereas by my said last Will and Testament, I have devised to my grand niece Ruthy Ann Clarke & her issue, my two houses & lots on 13th Street in the City of Washington—my Will & desire now is, that the said two houses & lots be subject to, and bound for, an annuity or yearly sum of Fifty dollars—which said annuity or yearly sum of $50—I hereby give to Mrs. Margaret Rowan and her children—

And it is my further Will & desire, that the estate devised by my said last Will and testament, to my grand niece Ruthy Ann Clarke, shall not be placed in her hands or possession, until she arrives to the age of twenty One years—but that the same shall be and continue in the possession of her Guardian who may be appointed by the Orphans' Court of this County—and by him rented out—the proceeds or rents of which, (after the payment by him of the aforesaid annual sum of fifty dollars to Mrs. Margaret Rowan & her children, which I hereby direct him to do in quarter yearly payments) shall be applied, (or so much of it as shall be necessary, in aid of the money arising from the sale of my personal estate,) [*and*]* to the education & maintenance of my said grand niece Ruthy Ann Clarke—Any balance remaining after such payments, shall be invested by him, in some safe & profitable stock, in her name—

203 Witness my hand & Seal, this 6th day of July 1830—

MERY DOUGERY. [SEAL.]

In presence of—
JOHN McLEOD.
ROB'T MILLER.
GEO. LAMB.

Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original will and codicil of Mary Dougherty, deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid; and that the said will and codicil after having been duly proven, were, by order of the said Court in accordance with the laws

[* Word enclosed in brackets erased in copy.]

of the District of Columbia, admitted to probate and record on the 13th day of August, A. D. one thousand eight hundred and thirty.

I further certify, That I have compared the foregoing copy of said will, and codicil with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 4th day of June, A. D. 1908.

[SEAL.] WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

(Here follow plats, marked pp. 204 and 205.)

206 EXHIBIT No. A 12.

Filed June 15, 1908.

Bill.

Filed 9 October, 1802.

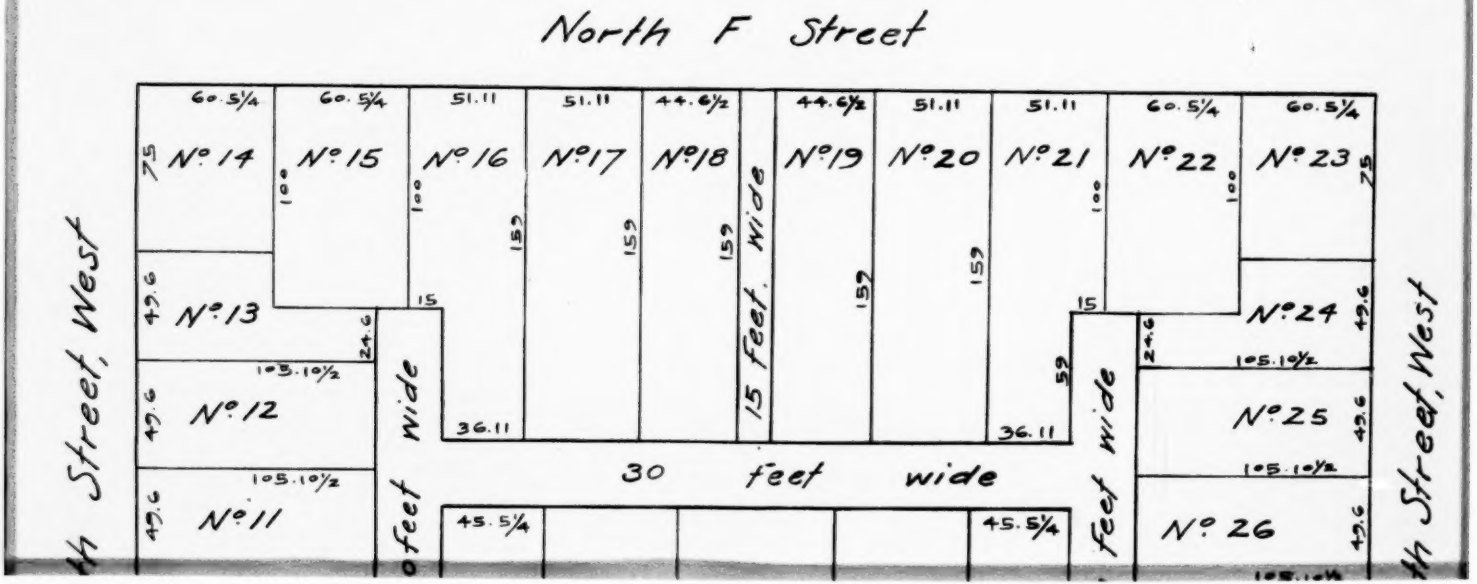
No. 26.

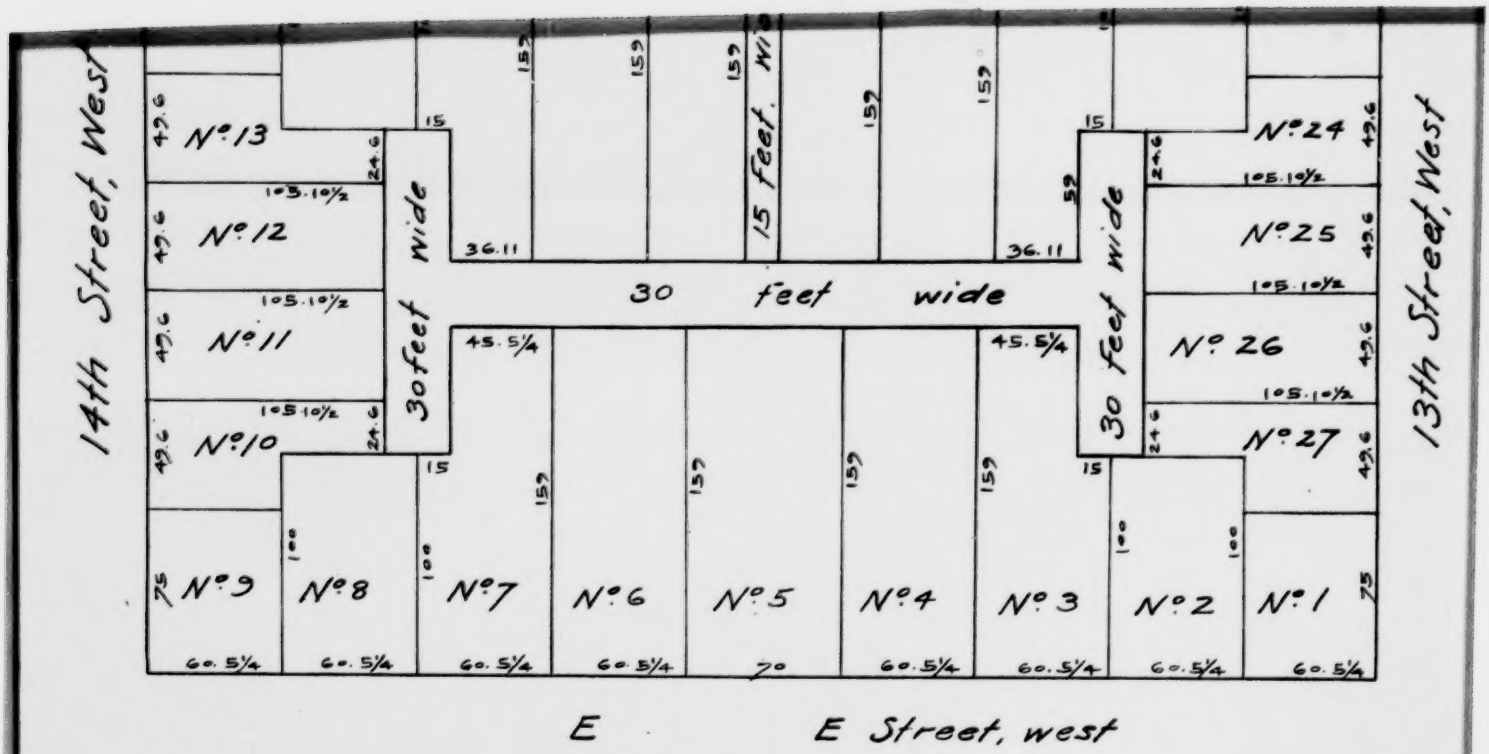
ROBERT S. BICKLEY
v.
THOMAS PETER, THOMAS MUNRO, & ROBERT BRENT, & BENJAMIN STODDERT, & ELIAS BOUDINOTT CALDWELL, & WILLIAM THORNTON, & JOHN STICKNEY, & ADAM LINDSAY, & EDWARD FRITHEY, & JAMES DOUGHERTY, & FRANCIS LOWNDES, of the County of Washington and District of Columbia, and SAMUEL BLODGETT, JUNIOR, & THOMAS MCEWEN, WILLIAM DAVIDSON, and WILLIAM SMITH, D. D., of the City of Philadelphia.

To the Honorable the Chief Judge and Assistant Judges of the Circuit Court for the District of Columbia, in Chancery now setting for the County of Washington:

Humbly complaining sheweth unto your Honors your Orator Robert S. Bickley of the City of Philadelphia, that in or about the year one thousand seven hundred and ninety three, the plan of a lottery was published by the Commissioners of the City of Washington appointed under the Act of Congress entitled "An act for
207 establishing the temporary and permanent seat of the Government of the United States" which act passed on the 16th day of July 1790. That this scheme was published by Samuel Blodgett Junior then and still of the City of Philadelphia as agent of the then Commissioners a copy of which Scheme is herewith exhibited

At the request of the Commissioners appointed under the Act of Congress entitled "An Act for establishing the temporary and permanent Seat of Government of the United States" the following Square in the City of Washington was recorded the 5th day of October, 1792.





Square 254

The Commissioners and David Burnes the original proprietor of this Square No. two hundred and fifty four in the City of Washington bounded on the North by North F Street on the East by West 13th Street, on the South by North E Street and on the West by West 14th Street have agreed on the division thereof in manner following to wit: The Lots numbered three, four, six, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, twenty two, 23. 26 & 27 are to remain to the said David Burnes, and the Lots numbered one, two, Five, seven, ten, eleven, fourteen, fifteen, nineteen, twenty, twenty one, twenty four and twenty five, are to be subject to be sold agreeable to the Deeds in Trust concerning the Lands in the said City

Witness our hands this Fifth day of October 1792

Witness for Comrs
Thomas Orme
Jno Mountz Junr for
David Burnes

Dd Stuart
Danl Carroll | Commrs

David Burnes

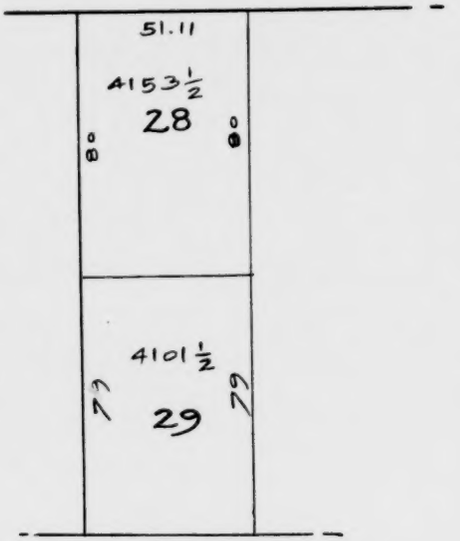
I certify that this is a true copy of record of page 254, Book of Original Squares of this office

June 1908

M. L. Hazen
Asst. Surveyor, District of Columbia

Lot No 20 Square 254

North F Street



Alley 30 feet

Washington D.C. August 16th, 1873

This is to certify that I have subdivided Lot No 20 in Square No. 254 City of Washington, into sub-lots 28 and 29 as laid down in the above plat.

Witness | John J. Bogue

J. E. Miller Agent
for B. F. Isherwood seal

Surveyors Office of the District of Columbia
Washington D.C. August 16th, 1873

I hereby certify that I have examined the subdivision of of Lot No. 20 in Square No 254 City of Washington, into sub lots 28 & 29 as laid down in the above plat and find the same to be correct and to correspond with the records of my office.

Given under my hand and seal of my office this 16th day of August A.D. 1873.

Wm. Forsyth
Surveyor of the District of Columbia

I certify that this is a true copy of record in Book H. D. C., page 232 of this office.

M. L. Hazen
Asst. Surveyor, District of Columbia

marked Complainant's Exhibit A, to which your Orator prays leave to refer and that the same may be taken as a part of this bill of Complaint together with all other exhibits by him hereinafter made. That your Orator relying upon the said proposed plan for a lottery did before the drawing of the said lottery began purchase of the said Blodgett a ticket Numbered 37,531 in the said lottery and for the same paid the said Blodgett eleven dollars the price at which ticket*t*s in the said lottery were sold. And your orator further sheweth unto your Honors that the sale and disposal of the ticket*t*s in the said lottery was intrusted wholly to the said Samuel Blodgett Junior and a certain William Deakins Junior since deceased. That on or about the month of September 1793 the Commissioners of the City of Washington being somewhat uneasy on account of their real or supposed responsibility for the prizes that should be drawn in the said lottery because of the scheme advertised which represented the business as the act of the said Commissioners by and through the said Blodgett as their agent, when in truth as they alleged it had been agreed between them & the said Blodgett that he the said Blodgett should have all the profit and take upon himself all the responsibility called upon the said Blodgett for an explicit declaration in writing upon that subject whereupon the said Samuel
208 Blodgett Junior and William Deakins Junior gave a writing dated 20th Sep. 1793, under their hands and Seals stating that the aforesaid lottery was the lottery of the said Blodgett and stating also, that they had respectively sold certain enumerated ticket*t*s and each binding himself to save harmless and indemnify the said Commissioners from and against any *any* prize to be drawn opposite any ticket*t* by them respectively sold. Which original agreement under the hand & seals of the said Blodgett & Deakins is now in the hands of Thomas Munroe agent for the affairs of the said City of Washington ready to be produced as this Honorable Court shall direct a true copy whereof is herewith produced marked Complainant's Exhibit B. That the said Commissioners not thinking themselves secure for or on account of their responsibility for the said Blodgett in the business of the said lottery and wishing too to make the adventurers in the said lottery secure in the prizes they might draw demanded afterwards of the said Blodgett a further security on that subject, and in compliance with such reasonable request he the said Blodgett on the 28th day of January 1794 executed a deed whereby he conveyed in fee simple as jointenants and not as tenants in common to Thomas Johnson Junior since deceased, and Thomas Peter of the City of Washington who hath survived the said Thomas Johnson, Junior, "all the lands and real estate and property of him the said Samuel Blodgett situate and being within the Territory of Columbia" and all the claim as well in law as in equity of him the said Blodgett to any lands in the Territory together with other property in the said deed mentioned, but upon condition to be void if
the said Blodgett should "well & truly pay all prizes and sums
209 of money with which he then was or afterwards might be chargeable or for which he might be liable for or on account of the said lottery and should in all things save indemnify and

keep harmless Thomas Johnson, David Stewart and Daniel Carroll (the then Commissioners of the City of Washington) their successors heirs executors & administrators of from and against all suits payments costs damages and charges on account of the said lottery by occasion or through any act or transaction of him the said Samuel Blodgett or any agent or person employed by him" which deed was duly acknowledged and recorded a copy of which marked Complainant's Exhibit C. is herewith produced. And your Orator further sheweth unto your Honors that he being in manner aforesaid the owner and possessor of the ticket in the said lottery numbered 37531 drew as a prize opposite to the said ticket the "Superb Hotel with baths out houses &c. &c. to cost fifty thousand dollars" as by the said plan and scheme hereinbefore referred to is offered and promised. That the said Hotel hath never been finished and the keys thereof delivered to your Orator as by the said scheme and plan of the lottery he was assured and promised it should be. That being thus deceived and imposed upon by the said Blodgett your Orator did at March term in the year 1798 institute a suit at Common Law in the Supreme Court of the Commonwealth of Pennsylvania against the said Blodgett to recover in damages a compensation from the said Blodget for the injury which he your orator had sustained for and *by* account of the breach of promise and undertaking on the part of him the said Blodget in delivering to your Orator his
210 said prize pursuant to the stipulations contained in the said scheme hereinbefore referred to. Upon this suit it was so proceeded that on the 22d day of December in the year 1801, the cause being at issue and the Jury duly summoned impanelled and returned and sworn in the said cause to try the issues joined therein when it was mutually agreed by and between your Orator and the said Blodgett with the leave of the said Court that the said Jury should be discharged from giving their verdict on the said issues and that the said Jury be impowered to act and decide as Referees to determine and order what sum of money if any should be paid by the said Blodgett to your Orator and if they thought proper to order titles and conveyances and other acts by either party to the other as justice should require whereupon the said Jury as referees as aforesaid did award that said Blodget should convey or cause to be conveyed to your orator in fee simple the Hotel and lots of ground thereunto belonging in the City of Washington aforesaid and that the said Blodgett should moreover pay to your orator the sum of twenty one thousand five hundred dollars with costs of suit, for the payment of which sum and the performance of that award the property in the City of Washington mortgaged by the said Blodget to Commissioners was by the terms of the said award to be resorted to in the first Instance. Which award and report of the said Jury as referees as aforesaid being read then and there in open Court and heard it was considered by the Court there that your Orator should recover of the said Blodgett the said sum of twenty one thousand five hundred dollars and the costs of that suit amounting to twenty-five pounds one shilling and ten pence current money of Pennsyl-
211 vania equal to sixty six dollars and ninety one cents current money of the United States and that the said Blodget should

be in mercy &c. and it was then and there further considered by the Court that the said Report of the said Jury as Referees as aforesaid be in all its other parts confirmed and carried into full and complete execution by the parties aforesaid as will more fully appear reference being had to the records of the said Court a transcript of the record of the proceedings in the said cause had, duly certified and attested is herewith produced marked the Complainant's Exhibit D, which Judgment still remains in full force unrevoked. And your orator further sheweth unto your Honors that by virtue of the said Deed hereinbefore referred to marked C, all the real property which the said Blodgett had within the limits of the territory of Columbia on the said 28th day of January in the year 1794 was pledged and by him made answerable to make good to the fortunate adventurer the prizes they should draw in the said lottery and consequently to your Orator his said prize, that your Orator has his claim to be paid out of that property still further confirmed by the award and the Judgment hereinbefore set forth. And your orator further sheweth unto your Honors that the lands and real estate and property of him the said Samuel Blodgett Junior situate and being within the territory of Columbia as well in law as in equity as by the said Deed is expressed consisted of and in part of a tract of land called Jamaica conveyed in fee simple to him the said Blodgett by a certain Philip Richard Fendall by Indenture bearing date on the 12th day of January 1792 for four hundred and ninety four acres of land
212 situate not only in the territory of Columbia but also in the City of Washington which deed was duly acknowledged as the law directs and recorded a copy whereof marked Complainant's Exhibit E is herewith produced. That this tract of land lying within the limits of the City of Washington was subject to a division with the Commissioners who were for and in behalf of the United States entitled to a part thereof for streets alleys &c. and to one half of the residue for the benefit of the United States. That this tract hath been since divided in part by and between the Commissioners of the City of Washington and the said Samuel Blodgett and that the lots and squares noted in the paper herewith produced marked the Complainant's Exhibit E as designated in the general plan of the said City have been assigned and allot-ed as the law directs by the said Commissioners to the said Samuel Blodgett as an original proprietor of lands in the said City. That a certain proportion of the said four hundred and ninety four acres of land called part of Jamaica still remains undivided in which the said Samuel Blodgett still has an interest and which is subject to the claim of your orator. It also consisted of and in a certain lot situate in the Town of Hamburg conveyed by John Baltzer to the said Samuel Blodgett by Indenture bearing date on the 25th day of September 1793 by the name of lot numbered one hundred in the original plan of the said Town called Hamburg which is as the law directs and requires acknowledged and recorded, a copy whereof marked Complainant's Exhibit G is herewith produced. That the said Town of Hamburg and its divisions being by law abolished and the ground therein made
213 part of the City of Washington with power to the Commissioners so to lay it off as to make it conformable to the gen-

eral plan of the said City of Washington and to compensate the holders of lots in the said Town of Hamburg by assigning to them others in lieu thereof in the said new plan the said Commissioners did assign to the said Blodgett with his assent lot numbered ten in square numbered eighty four in the general plan of the City of Washington in lieu of his former Lot numbered one hundred in the plan of the old town of Hamburg. It also consisted of lot number One in square four hundred and thirty in the said City of Washington conveyed to him by David Burnes by Deed a copy whereof is herewith produced marked Complainant's Exhibit H and lot numbered four in square four hundred and thirty in the said City conveyed to him by David Burnes by deed a copy whereof is herewith produced marked Complainant's Exhibit I, in lot numbered Seven in Square two hundred and twenty five in the said City conveyed to him by the Commissioners thereof by Certificate duly recorded a copy whereof is herewith exhibited marked Complainant's Exhibit K, lot numbered one in Square two hundred in the said City conveyed to him by the said Commissioners by certificate a copy whereof duly recorded is herewith produced marked Complainant's Exhibit L, lot numbered eight in square two hundred ninety five in the said City conveyed to him by the said Commissioners in virtue of a sale made on the 22d day of October 1792 recorded in Liber B folio 295 a copy of which Certificate of purchase is herewith produced marked Complainant's Exhibit M, lots numbered twenty two and twenty three in square six hundred and eighty eight in the said City conveyed to him by the said Commissioners in con-
214 sequence of a sale made on the 10th day of October 1792 a copy of which certificate of sale recorded in Liber G folio 261 is herewith produced marked Complainant's Exhibit N and also in the following property which the said Blodgett purchased of the said Commissioners at the times hereinafter mentioned which being fully paid for by the said Blodgett Certificates in due form have regularly issued therefor, but the Commissioners of the City of Washington meaning to hold the same as a security to themselves and to the fortunate adventurers in the said lottery have not delivered the same to the said Blodgett or caused them to be recorded but whilst they remained in Office held the same and when they went out of Office the same fell into the hands of Thomas Munro superintendant of City affairs who now holds them that is to say: Lots numbered twenty and twenty one in Square two hundred and fifty four in the said City sold to the said Blodgett on the 8th day of October 1792. Lots numbered four and num'd twenty in Square four Lots numbered twenty one in Square sixteen sold to the said Blodgett on the 9th October 1792 Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 24 in Square Six hundred and eighty eight sold to the said Blodgett on the 10th day of October 1792 Lots numbered 1, 4, 5, 7, 14 and 18 in square numbered 200 and Lots numbered 7 & 9 in Square 225 sold to the said Blodgett on the 22d day of October 1792 and lot numbered five in square numbered 12, sold to the said Blodgett on the 10th day of June 1793, all which certificates are now in the hands of the said Thomas Munroe

Superintendant for City affairs, who your Orator prays may be made a Defendant to this bill of Complaint. And your Orator
215 further sheweth unto your Honors that on and before the twenty eighth day of January 1794, the date of the deed aforesaid from the said Blodgett to Thomas Johnson Junior and Thomas Peter he the said Blodgett was possessed of and in a lot of ground in George Town in the said Territory of Columbia known and distinguished in the general plan of the original Town called George Town by Lot numbered forty six for which he the said Blodgett holds the bond of Robert Brent conditioned for the conveyance of the same which said Robert Brent your orator prays may be also made a Defendant to this his bill of Complaint. And your Orator further shews unto your Honors that the lots in the city of Washington belonging to and appropriated by the said Blodgett and the Commissioners of the City of Washington for the said Hotel/ are known and distinguished in the plans of the said City by Lots numbered 1, 2, 3, 4, 5 & 14 in Square numbered 430, that the legal title to lots numbered 2, 3, 4 & 5 aforesaid are now in Thomas Munroe Superintendant for City affairs Lot numbered 4, aforesaid having been heretofore, to wit, on the 17th day of March 1801, conveyed by the said Blodgett to the Commissioners of the City of Washington and lots numbered 2, 3 & 5 having always been in them and the legal titles in lots numbered 1 & 14 aforesaid being in the said Blodgett, all which lots to wit lots numbered 1, 2 3, 4, 5 & 14 in square 430 are by the terms of the award and Judgment hereinbefore referred to marked Complainants exhibit D to be conveyed with the said Hotel/ to your Orator.

And your orator further sheweth unto your Honors that since the 28th of January 1794 to wit on the 7th July 1795, the
216 said Blodget executed a deed to Uriah Forrest and Benjamin Stoddert by which he conveyed or pretended to convey to them in fee all the property which he had in the Territory of Columbia in trust to secure the payment of the prizes which should be drawn in a second lottery which he the said Blodgett had then set on foot, a copy of which deed is herewith produced marked Complainants' Exhibit O which said Uriah Forrest afterwards, to wit, on the 1st day of September 1801, conveyed and released to the said Benjamin Stoddert all his interest in the property to them conveyed by the said Deed marked O subject to the trusts in the said Deed set forth a copy of which deed from Uriah Forrest to Benjamin Stoddert is herewith produced marked Complainants' Exhibit P, which said Benjamin Stoddert your orator also prays may be made a Defendant to this his bill of Complaint. And your orator further sheweth unto your Honors that on the 11th day of March 1800 the said Samuel Blodgett by deed of Bargain and Sale conveyed or pretended to convey unto a certain Thomas McEwen and William Davidson both of the City of Philadelphia in fee simple a square designated in the plan of the City of Washington by Square numbered 193, which Square as will appear reference being had to the Complainants' Exhibit F, is one of the squares included within the

said Blodgett's part of the tract of land called Jamaca and assigned to him by the Commissioners of the City of Washington as an original proprietor of that land which said Thomas McEwen and William Davidson your orator prays may be also made defendants to this bill of Complaint. And your orator further sheweth unto
your Honors that the said Blodgett under pretense of raising
217 or creating a fund for an Insurance Company under the
name and style of the Washington association and United States Insurance Company conveyed or pretended to convey in fee simple for that purpose to the said Benjamin Stoddert Elias Boudinott Caldwell, William Thornton and John Stickney all of the County of Washington and District of Columbia a number of squares or portions of ground in the said City of Washington and among others the following Squares in the said City numbered as follows 416, 361, 393, 156, 157, 101, 180, 208, 210, 363, 519, 396, 336, 337, square north of 337 squares 338, 417, 442, 445, 476, 478, square north of 508, square 509, 365, 366, 395, square north of 396, square 397, 239, 241, square north of 242, 279, 308, 310, 508 and 688 all of which enumerated squares except the square 688 are parts of the said tract of land called Jamaca and were assigned by the Commissioners of the City of Washington aforesaid to the said Samuel Blodget as an original proprietor of the said land as will appear by the Exhibit F, hereinbefore referred to and the said Square numbered 688 is one of the Squares hereinbefore referred to for which the said Commissioners of the City of Washington did with-old from the said Blodgett his Certificate as security for your orator & others interested in the said first mentioned Lottery, except for Lots numbered 22 & 23 in the said Square which were conveyed to the said Blodgett by the said Commissioners in the manner hereinbefore stated. Which said Elias B. Caldwell, William Thornton and John Stickney your orator prays may be made Defendants to this his bill of Complaint. And your orator further shews unto
your Honors that on the 1st day of September in the year
218 1801, the said Samuel Blodgett and Benjamin Stoddert by
deed of bargain and sale conveyed or pretended to convey unto a certain Adam Lindsay of the City of Washington — a part of the said square in the City of Washington known and distinguished in the plan of the said City by square numbered 688 Beginning for the said part at the north east corner of the said square and running thence with a line of first street east one hundred and twenty five feet three inches to an alley twenty feet wide thence with the line of the said alley west fifty two feet thence north one hundred and twenty-five feet three inches and thence to the beginning which said Adam Lindsay your orator prays may be made a defendant to this his bill of Complaint. And your Orator further sheweth unto your Honors that on the 15th day of September 1801, the said Blodgett under pretense of making a further provision for the insurance Company above mentioned conveyed or pretended to convey to the aforesaid Elias B. Caldwell with other property a number of squares and parts of squares in the said City of Washington

and among others the Square and parts of squares hereinafter mentioned all of which are parts of the said tract of land called Jamaca and were assigned to the said Blodgett by the Commissioners of the City of Washington, as being the original proprietor of that land as will appear reference being had to the Exhibit F hereinbefore referred to, that is to say the following squares and parts of squares 156, 157, 180, 208, 210, the south east division of 361, 363, 365, 366, south division of 393, 395, square north of square 396, 397, south division of 416, 239, 241, square North of square 242, 279, 308, 336. Square north of square 337, 338, 417, 442, 219 445, 476, 478, Square north 508, *508*, 509, 519, & 396, and by the said Deed conveyed or pretended to convey to the said Caldwell all that part of square 688 which had not been conveyed as hereinbefore stated to the said Adam Lindsay. And your Orator further sheweth unto your Honors that the said Blodgett by two deeds the one dated 4th of April 1801, to one Edward Frithey of the City of Washington the other dated the 13th day of April 1801, to one James Dougherty of the said City leased or pretended to lease to them respectively parts of lot numbered 20 in Square 254 which is one of the Lots hereinbefore mentioned to have been sold in the year 1792 by the Commissioners to the said Blodgett but for which he has no title on record and which is subject to the claim of your Orator which said Edward Frithey and James Daugherty your Orator prays may be made Defendants to this his bill of Complaint. And your orator further shews unto your Honors that on the 1st day of September 1801, the said Samuel Blodgett by deed conveyed or pretended to convey to a certain Francis Lowndes of George Town all that Square in the said City of Washington known by the square numbered 688, hereinbefore often mentioned, except that part thereof conveyed to the said Adam Lindsay, in trust to enable him the said Lowndes to indemnify a certain William Smith D. D. of Philadelphia (father-in-law to the said Blodgett) and the said Benjamin Stoddert for having become special Bail in Philadelphia for the said Blodgett. Which said Francis Lowndes and William Smith your orator prays may be made defendants to this his bill of Complaint. And your orator further shews unto your 220 Honors that the Deed hereinbefore referred to marked exhibit C from the said Blodgett to Johnson and Peter includes comprehends and embraces all the property hereinbefore mentioned and that the whole of it as well that whereof the legal title is in Thomas Munro Superintendant for City affairs & in Robert Brent as is hereinbefore stated as that which is mentioned in the various Deeds hereinbefore referred to from the said Blodgett to Benjamin Stoddert & Uriah Forrest to Thomas McEwen & William Davidson, to Benjamin Stoddert Elias B. Caldwell William Thornton and John Stickney to Adam Lindsay to Elias B. Caldwell, to Edward Firthey to James Daugherty and to Francis Lowndes and that the same together with all the other property in this his bill of Complaint mentioned except Lots numbered 1, 2, 3, 4, 5 & 14 in Square 430 appropriated for the use of the Hotel are sub-

jected to the claim of your orator both in law and equity and are subject to be sold to raise the money due to him. But in as much as your Orator is without remedy at common law and only relievable in a Court of Equity to the end that the said Samuel Blodgett Junior, Thomas Munroe Superintendant for City affairs, Robert Brent, Benjamin Stoddert, Thomas McEwen, William Davidson, Elias Boudinott Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithey, James Daugherty, Francis Lowndes and William Smith D. D. may upon their several and respective corporal oaths full true and perfect answers make to all and singular the premisses hereinbefore set forth as fully and particularly as if the same were here again repeated and particularly set forth and to the end that the said Samuel Blodgett may by deed or deeds good and operative in law be compelled to convey to your orator
221 in fee simple, the lots in the said City of Washington hereinbefore mentioned numbered 1 & 14 in Square 430 together with the said Hotell and that the said Thomas Munro as Superintendant of the said City of Washington may be compelled by Deed or deeds good and operative in law to convey to your Orator and his heirs in fee simple the said lots numbered 2, 3, 4 & 5 in the said Square 430 together with the said Hotell if it should stand on either of the said Lots by him so to be conveyed, and that the residue of the property mentioned and set forth in this his Bill of Complaint or so much thereof as shall be necessary therefor be sold in such manner as your Honors shall direct for ready money until a sufficient sum shall be raised therefrom to pay and satisfy your Orator the amount to him adjudged by the award and Judgment hereinbefore referred to marked Exhibit D with all interest that has accrued or may accrue thereon together with his costs expended in prosecuting this suit and that the said Thomas Munro as Superintendant as aforesaid and the said Robert Brent may be decreed to convey such purchaser or purchasers respectively any lot or lots or portions of ground which may be so sold the legal title whereof is in them or either of them as the case may require, and that the interest of the said Benjamin Stoddert, Thomas McEwen, William Davidson, Elias B. Caldwell, Wm. Thornton, John Stickney, Adam Lindsay, Edward Frithey, James Daugherty, Francis Lowndes & William Smith D. D. and each and every of them of and in any of the said property which may be so sold by the Decree of this Honorable Court, which the said Defendants or any of them have derived under the said Deeds hereinbefore mentioned or
222 any of them or in any other way may be decreed against and determined of no validity and to the end that your Orator may have such other and further relief as to your Honors may seem right in the premises may it please your Honors to grant to your Orator a writ or writs of Subpœna to be directed to the said Samuel Blodgett Junior, Thomas Peter, Robert Brent, Thomas Munro, Benjamin Stoddert, Thomas McEwen, William Davidson, Elias Boudinott Caldwell, William Thornton, John Stickeny, Adam Lindsay, Edward Frithey, James Daugherty, Francis Lowndes &

William Smith D. D. commanding them and each of them personally to be and appear before this Honorable Court at a certain day therein to be limited then and there to abide by such order and decree as your Honors shall make in the premises, and as the said Samuel Blodgett, Thomas McEwen, William Davidson, and William Smith D. D. four of the Defendants above named reside in the City of Philadelphia in the Commonwealth of Pennsylvania and without the Jurisdiction of this Honorable Court your Orator prays that your Honors will cause notice to be given and publication to be made as the law in like case directs warning the said last named four Defendants to be and appear personally before your Honors on a certain day therein to be limited then & there to stand to abide by and perform such order and decree as your Honors shall make in the premises and your Orator as in duty bound shall pray &c.

JOHN T. MASON,
For the Compl't.

223 (EXHIBIT A.)

By the Commissioners appointed to prepare the public buildings, &c., within the City of Washington for the reception of Congress, and for the permanent residence after the year 1800. A lottery for the improvement of the Federal City 50,000 ticket*s* at 7 dollars are 350,000 dollars. List of prizes.

1 Superb Hotel with Baths, out house, &c., &c., to cost...			$50,000
1 Cash prize			25,000
1 Ditto			20,000
1 Ditto			15,000
1 Ditto			10,000
2 Ditto	5,000	are	10,000
10 Ditto	1,000		10,000
20 Ditto	500		10,000
100 Do.	100		10,000
200 Do.	50		10,000
400 Do.	25		10,000
1000 Do.	20		20,000
1500 Do.	10		150,000
16,737 Prizes			
33,263 Blanks			
50,000		Dollars	350,000

the sole design of this lottery being to facilitate other improvements together with the public buildings it is the particular desire of the Commissioners that there may be effected with as few deductions from the prizes as possible; how far their endeavors may be
224 answered the scheme of the lottery will demonstrate. The Keys of the Hotel, when complete, will be delivered to the

fortunate possessor of the ticket drawn against its number all the prizes will be paid without deduction in one month after the drawing by the City Treasurer at Washington or at such Bank or Banks as may be hereafter announced. The drawing will commence on Monday the 9th of September next at the City of Washington. Ticket*s* may be had of Col. Wm. Dickens, City Treasurer of Washington: of Messrs. James West and Co., Baltimore; of Mr. Peter Gilman, Boston and at such other places as will be hereafter published N. B. one hundred Dollars will be given for the best plan of an elegant and convenient Hotel or Inn, with hot and cold baths, stable and other out houses, if presented on or before the 20th of April, and a preference will be given to the artist for a contract provided he be duly qualified to complete his plan. The ground on which the Hotel and out houses are to be *re*ected will be a corner lot of about 90 by 200 feet with a back avenue to the stables &c., sections and estimates of the expence will be expected with the elevations &c., compl*eat*- and 50,000 Dollars must be regarded by the architect, as the utmost limit in the expense intended for this purpose.

January 3 S.

BLODGETT,
Agent for the Affairs of the City.

(EXHIBIT B.)

The Commissioners of the Public buildings in the City of Washington having given their permission to Mr. Samuel Blod-
225 gett, Jun. to frame a lottery for raising a sum of money to erect a Hotel in the said City and to conduct the management of the lottery entirely without their interference and not making themselves answerable in any manner for anything relating thereto but intending that the responsibility for and concerning the same should fall solely on the said Blodgett, and as the said Blodgett and Col. William Deakins Jun., have disposed of the ticket*s* in the said lottery and received the price thereof or become answerable therefor and as it is reasonable that they should become responsible for the lottery having sold the ticket*s* and received the money or securities for the same and that the Commissioners should be indemnified of and from all claims which may be made against them by reason of the said lottery. Now these presents witnesseth that the said Samuel Blodgett and William Deakins Jun. have agreed and do hereby severally covenant and agree to and with Thomas Johnson, David Stuart and Daniel Carroll the Commissioners aforesaid their heirs executors and administrators in manner following—The said William Deakins Jun. doth agree to save harmless and indemnify the said Commissioners their heirs, executors and administrators of and from all claims and demands whatever to be had made or accrued against them by reason of any prize to be drawn opposite any number or numbers of ticket*s* in the said lottery from number one to number five thousand inclusive, from number ten thousand and

one to eleven thousand inclusive, from number eleven thousand five hundred and one to thirteen thousand five hundred inclusive, from number fourteen thousand and one to fifteen thousand inclu-
226 sive, from number sixteen thousand seven hundred & forty one to sixteen thousand seven hundred and fifty inclusive, from number sixteen thousand eight hundred and twenty one to sixteen thousand eight hundred and sixty inclusive, from number seventeen thousand one hundred and one to seventeen thousand five hundred inclusive, from number seventeen thousand five hundred and one to eighteen thousand inclusive, from number twenty thousand five hundred and two to twenty thousand five hundred and ten inclusive, from number twenty thousand eight hundred and two to twenty thousand eight hundred and sixteen inclusive, from number twenty thousand eight hundred and forty two to twenty thousand eight hundred & fifty inclusive, from number twenty thousand eight hundred and forty two to twenty thousand eight hundred and seventy inclusive, from number twenty thousand nine hundred and twelve to twenty thousand nine hundred and twenty nine inclusive, from number twenty thousand nine hundred and thirty one to number twenty thousand nine hundred and thirty nine inclusive, from number twenty thousand nine hundred and ninety two to twenty one thousand inclusive, from number twenty one thousand five hundred and one to twenty two thousand inclusive, from number twenty two thousand and one to twenty two thousand five hundred, from number twenty two thousand five hundred and seventy two to twenty two thousand five hundred and eighty inclusive, from number twenty two thousand six hundred and twelve to twenty two thousand six hundred and twenty inclusive, from number twenty two thousand six hundred and sixty two to twenty two thousand six hundred and seventy inclusive, from number twenty two thousand six hundred and seventy two to twenty two thousand
227 six hundred and eighty inclusive, from number twenty two thousand six hundred and eighty two to twenty two thousand eight hundred and ninety inclusive, from number twenty two thousand nine hundred and two to twenty two thousand nine hundred and ten inclusive, from number twenty two thousand nine hundred and twelve to twenty two thousand nine hundred and twenty inclusive, from number twenty two thousand nine hundred and eighty two to twenty two thousand nine hundred and ninety inclusive, from number twenty two thousand nine hundred and ninety two to twenty three thousand five hundred inclusive, from number twenty four thousand and one to twenty five thousand, inclusive, from number twenty five thousand and thirty one to twenty five thousand six hundred and — inclusive from number twenty five thousand six hundred and one to twenty six thousand inclusive, from number twenty six thousand five hundred and one to twenty seven thousand inclusive, from number seventy seven thousand five hundred and one to twenty eight thousand inclusive, and number twenty eight thousand two hundred and ten & from number twenty eight thousand six hundred and twenty one to twenty nine thousand nine hundred inclusive, from twenty nine thousand nine hundred and one to thirty thousand in-

clusive, from number thirty two thousand and one to thirty two thousand five hundred inclusive, from number thirty three thousand one to thirty three thousand four hundred and ninety eight inclusive, from number thirty six thousand and one to thirty seven thousand inclusive, from thirty seven thousand and one to thirty seven thousand five hundred inclusive, from number thirty
228 eight thousand five hundred and one to thirty nine thousand inclusive, from number thirty nine thousand five hundred and eleven to forty thousand inclusive, from number forty eight thousand five hundred and one to forty nine thousand inclusive, amounting in the whole to nineteen thousand five hundred and forty eight—those being the ticket/s sold by the said William Deakins Junior. And the said Samuel Blodgett Jun. doth agree to save harmless and indemnify the said Commissioners their heirs, executors and administrators of and from all claims and demands whatsoever to be had made or accrued against them by reason of any prize to be drawn opposite any number or numbers of ticket/s in the said lottery not before particularly mentioned to have been sold by the said William Deakins Junior, amounting in the whole to the quantity of thirty thousand one hundred and fifty both inclusive those being the ticket/s sold by the said Samuel Blodget Jun. But as it may happen that the high prizes in the said lottery may be drawn opposite the numbers sold by the said Blodgett only or these sold by the said Deakins only on which event there may not be money enough in the hands of such prizes. It is thereupon mutually covenanted and agreed by the said Blodgett and Deakins that of the prizes drawn opposite the ticket/s sold by them severally shall not amount to as much as the money arising from the sale of all the ticket/s sold by such of them the balance after paying all the prizes aforesaid shall be paid to such of them whose ticket/s shall not have sold for so much as will satisfy the prizes drawn opposite their numbers so that the whole number of prizes may and shall be satisfied by the said Deakins and Blodgett together and that they
229 shall apply the whole money arising from the sale of the ticket/s solely to the purposes of the lottery and in time stipulated to pay the same to the fortunate adventurers the reasonable expenses of the lottery only deducted—and the said Blodgett and Deakins do hereby severally covenant & agree to and with the Commissioners aforesaid that they and each of them shall and will at any time hereafter make and execute any further Instrument of writing the more effectually to secure the said commissioners of and from all claims to be had or made against them for or by reason of said lottery according to the true intent and meaning hereof and that they will do any further act or acts which may be deemed reasonable and just to carry into full effect the indemnity hereby intended to be given. In Witness Whereof the said William Deakins Junior and Samuel Blodgett Jun., have hereunto set their hands and affixed their seals this twentieth day of September seventeen hundred and ninety three the words both inclusive between the 71 & 72. lines the words two hundred between the 76 & 77th lines the words to be drawn be-

tween the 94 & 95 lines & the words both inclusive between the 98 & 99th lines being first interlined.

WILL DEAKINS, JUN. [SEAL.]
SAMUEL BLODGETT, JUN. [SEAL.]

Witness:
JNO. SUTER.
JAMES COOK.

230 (EXHIBIT C.)

This Indenture made the twenty-eight day of January seventeen hundred and ninety-four between Samuel Blodgett Jun., of the one part and Thomas Johnson Jun., and Thomas Peter of the other part, witnesseth that the said Samuel Blodgett for securing the payments of the prizes and all sums of money with which he may be chargeable or in any manner liable for or on account of the lottery now drawing in George Town commonly called the Hotel Lottery and for the indemnity of Thomas Johnson, David Steuart and Daniel Carroll, Commissioners appointed in virtue of the act of Congress for establishing the temporary and permanent seat of the Government of the United States their successors, heirs, executors and administrators, from and against all costs, damages and charges on account of the said lottery by occasion or through any act or transaction of him, the said Samuel Blodgett or any agent or person employed by him and in consideration of the sum of five shillings current money to him the said Samuel Blodgett in hand paid the receipt whereof he doth hereby acknowledge, hath given, granted, bargained, sold, aliened, assigned and transferred and by these presents doth give, grant, bargain, sell, alien, assign and transfer to them, the said Thomas Johnson Jun., and Thomas Peter, their heirs, executors, administrators and assigns all the lands and real estate and property of him the said Samuel Blodgett situate and being within the Territory of Columbia with their and each and every of their
231 rights members and appurtenances and all the estate, right, title, use, trust claim and demand in law and in equity of him the said Samuel Blodgett of in and to the said lands and real estate and all lands and real estate within the said Territory of Columbia, and also all his, the said Samuel Blodgett, seven thousand one hundred and sixty shares for in the stock in the insurance Company of North America certificates are numbered and are for the shares as follows, to wit, number twenty-seven for five hundred shares, number forty-three for nine hundred and sixty-two, number thirty-five for four thousand two hundred and sixty, number thirty-three for one thousand and number forty-two for four hundred and thirty-eight. To Have and To Hold the said lands and other the premises to the said Thomas Johnson Jr., and Thomas Peter their heirs, executors, administrators and assigns to the only proper use and behoof of them the Thomas Johnson Junior and Thomas Peter their heirs, executors, administrators and assigns forever and for no other use intent or purpose whatsoever and he, the said Samuel Blodgett doth hereby name and appoint Clement Biddle and Ebenezer Hasard

of the City of Philadelphia his true and lawful attornies jointly and each of them his true and lawful attorney severally for him and in his name and as his attorney or attornies to transfer and do all lawful act and acts necessary for the effectual transfer of all the said stock and shares in the Books of the said Insurance Company to the said Thomas Johnson Junior and Thomas Peter or the survivor or survivors of them provided always that if the said Samuel Blodgett his heirs, executors or administrators do and shall well and truly pay all prizes and sums of money with which he is or may be
232 chargeable or for which he may be liable for or on account of the said lottery and shall in all things save indemnify and keep harmless the said Thomas Johnson, David Stueart and Daniel Carroll their successors, heirs, executors and administrators of from and against all suits, payments, costs damages and charges on account of the said lottery by occasion or through any act or transaction of him the said Samuel Blodgett or any agent or person employed by him then this present Indenture and every clause thereof shall be and become void. In witness whereof the parties to these presents have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

SAM'L. BLODGETT. [SEAL.]

Signed, sealed and delivered in the presence of
WILL DEAKINS, JUN.,
COLLEN WILLIAMSON.
(*Witness.*)

January 18th 1794.—Received of the within named Thomas Johnson Junior and Thomas Peter the within mentioned sum of five shillings.

SAM'L. BLODGETT.

Witness:
WILL DEAKIN, JUN.
COLLEN WILLIAMSON.

On the 28th day January 1794, came before me the subscriber one of the Commissioners appointed by a virtue of the act of Congress for establishing the temporary and permanent seat of the Government of the United States the within named Samuel Blodgett and acknowledged the within to be his act and deed.

TH. JOHNSON.

233 (EXHIBIT D.)

Pleas before the Honorable Thomas McKean, Esquire, Doctor of Law, Chief Justice and his associates Justices of the Supreme Court of the Commonwealth of Pennsylvania, of the Term of March, in the year of our Lord, MDCCXCVIII, Philadelphia County.

Samuel Blodgett late of the County of Philadelphia aforesaid yeoman was attached to answer Robert S. Bickley of a plea of trespass

on the case and so forth Whereupon the said Robert by Jared Ingersoll, his attorney, declares and says for that whereas at the City of Washington to wit, at the County aforesaid the fifth day of January in the year of our Lord one thousand seven hundred and ninety-three the said Samuel as an agent with a commission *del credere* with the approbation of the Commissioners appointed by the President of the United States to prepare the public buildings within the said City of Washington for the reception of Congress and for their permanent residence after the year one *one* thousand eight hundred advertised the plan of a lottery for the improvement of the Federal City which said plan of a lottery was written by the said Samuel Blodgett and by him caused to be printed and published with the name of the said Samuel thereto by him subscribed calling himself agent for the affairs of the City in which said plan of a lottery so as aforesaid published by the said Samuel it was announced and declared that the prizes consisted and were to consist of one Superb Hotel with bath, out houses, &c.. &c., to cost fifty thousand dollars and the said Samuel did then and therein and by means of
234 the said plan further publish and declare that by the said scheme at least the amount of the ticket*s* would remain to the fortunate adventurers and further the said Samuel did then and there in and by the said plan further declare and publish that although some expence must necessarily attend the conducting of the said lottery (which expense would be taken from the principal prize the Commissioners af*or*esaid having agreed to present in return a sufficient quantity of excellent free stone together with the best adapted lots, for the said Hotel and for the said stables, out houses and so forth, that the value of the said lottery entire might be fairly rated at something more than par, and that the Keys of the said Hotel when compleat- would be delivered to the fortunate possessor of the ticket*t* drawn against its number and that the drawing of the said lottery would commence on Monday the ninth day of September then next at the said City of Washington that the ground on which the said Hotel and out houses were to be erected was a corner lot of about ninety by two hundred feet with a back avenue to the stable and so forth sections and estimates of the expenses would be expected with the elevation and so forth complete and that fifty thousand Dollars must be regarded by the architect as the utmost limit in the expence intended for that purpose and the said Samuel was then and there by the Commissioners nominated and appointed as aforesaid to sell and dispose of the ticket*s* in the said lottery to receive from the purchasers pay therefor and the said Samuel Blodgett did then and there undertake to sell the said ticket*s* in the said lottery to receive pay for the same at the rate of seven dollars a ticket*t*,
235 to pay the cash prizes and to pay and advance for the use of the said Hotel and for building and completing the same fifty thousand Dollars money of the United States. And the said Robert relying upon the engagement and undertaking of the said Samuel so as aforesaid made and published did then and there purchase from the said Samuel, a ticket*t* in the said lottery, to wit, the ticket No. 37,531 and did then and there pay the said Samuel there-

for eleven dollars money aforesaid. And the said Robert by his attorney aforesaid further states that the said lottery so as aforesaid advertised by the said Samuel on the eighteenth day of September in the year last aforesaid was proceeded with at Washington, to wit, at the County aforesaid and drawn and caused by the said Samuel to be drawn and then and there the said Robert agreeably to the form and terms and plan of the said lottery drew as prize the said Hotel which by the advertisement aforesaid was to cost fifty thousand dollars, the said Robert being then and there the fortunate possessor of the ticket drawn against the number of the said prize and hotel to wit the aforesaid ticket No. 37,531, hereby according to the premises aforesaid and the advertisement so as aforesaid published by the said Samuel, he, the said Robert, was and is entitled to demand of the said Samuel that he the said Samuel should pay advance and expend for the erecting and finishing the said Hotel the aforesaid sum of fifty thousand dollars money aforesaid in a reasonable time out of the monies received by him, the said Samuel for tickets in the said lottery by him, the said Samuel sold and delivered and that he, the said Samuel, should deliver to him the said
236 Robert the Keys of the said Hotel when complete. And the said Robert by his attorney aforesaid further states that the said Samuel at the City of Washington to wit, at the County aforesaid the day and year aforesaid, did receive from divers persons for tickets in the said lottery sold by him, the said Samuel, a large sum of money, to wit, the sum of three hundred and fifty thousand dollars for tickets in the said lottery then and there sold by him the said Samuel and that he, the said Samuel, did then and there sell and deliver to divers persons all the tickets in the said lottery amounting at the price of seven dollars a ticket to the sum of three hundred and fifty thousand dollars money aforesaid and the said Robert did then and there apply to the said Samuel and demand and require that he, the said Samuel, would within a reasonable time, to wit, on or before the nineteenth day of September in the year of our Lord one thousand seven hundred and ninety-seven advance and pay for the purpose of erecting and finishing the said Hotel as aforesaid the said sum of fifty thousand dollars money aforesaid and that he, the said Samuel, would deliver to him the said Robert the Keys of the said Hotel completed agreeably to his engagement made as aforesaid and the said Robert did then and there apply to the said Commissioners so as aforesaid appointed and did then and there request and demand of them the said Commissioners that they would compel and enforce the said Samuel Blodgett to a compliance with his engagements made and published for the building the said hotel and employ in erecting the same the sum of fifty thousand Dollars money aforesaid and to deliver the
237 Keys thereof when complete to the said Robert, he being the possessor of the ticket drawn against the number of the said hotel prize according to the plan of the said lottery as published by the said Samuel and the said Commissioners then and there denied that they were in any wise accountable and refused to interfere on the said occasion. And the said Robert in fact saith that although

he, the said Samuel, hath advanced and expended in erecting the said Hotel the sum of thirty thousand dollars, yet the said Samuel not regarding his contract promise and undertaking as aforesaid as to the erecting and finishing the said Hotel and expending in compleating the same the residue of the said sum of fifty thousand dollars to wit, the sum of twenty thousand dollars hath not advanced or expended the said last mentioned sum of twenty thousand dollars in compleating the said Hotel nor have the said commissioners altho- to do the same the said Samuel afterwards, to wit, on the same day and year last aforesaid at Washington to wit, at the County aforesaid and often afterwards the said Samuel was by the said Robert requested. But the said Samuel to advance the said sum of money last mentioned to deliver the Keys of the said Hotel in a complete state or to perform the said promise and undertaking in that particular hath hitherto wholly refused and still doth refuse whereby the said Hotel remains unfinished and is going to decay to the damage of the said Robert eighty thousand dollars whereby action hath accrued to the said Robert to demand and have of the said Samuel his damages aforesaid to wit, eighty thousand Dollars money aforesaid. And whereas also afterwards, to wit, on the same day aforesaid at Washington aforesaid to wit, at the County aforesaid the said
238 Samuel was indebted to the said Robert in other eighty thousand dollars money of the United States for money before that time had and received by the said Samuel to the use of the said Robert and being so indebted the said Samuel in consideration thereof afterwards to wit, on the same day and year last aforesaid at the county aforesaid undertook and faithfully promised the said Robert to pay him the said sum of Eighty thousand dollars last mentioned when he should be afterwards by the said Robert thereunto requested. Nevertheless the said Samuel hath not paid to the said Robert the said sums of money aforesaid or either of them or any part thereof altho- so to do the said Samuel was by the said Robert afterwards requested to wit, on the same day and year last aforesaid and since. But to do the same the said Samuel hath hitherto wholly refused and still doth refuse to the damage of the said Robert one hundred thousand Dollars and therefor he brings suit &c.

Ingersoll. John Doe and Richard Doe } pledges to prosecute and the said Samuel Blodgett appears by Benjamin R. Morgan his attorney and pleads non assumpsit and payment with leave to give the special matter in evidence Replication non Solvit and issues Continued September Term one thousand seven hundred and ninety-eight, continued December Term one thousand seven hundred and ninety-eight, continued March Term one thousand seven hundred and ninety nine, continued December Term one thousand seven hundred and ninety-nine, Continued March Term one thousand
239 eight hundred, continued September Term one thousand eight hundred, continued March term one thousand eight hundred and one, continued September Term one thousand eight

hundred and one, continued. And now to wit, at a Supreme Court held at Philadelphia for the Commonwealth of Pennsylvania on the twenty second day of December in the year of our Lord one thousand eight hundred and one before the Honorable Edward Shippen, Chief Justice and his associate Justices of the Supreme Court of the Commonwealth aforesaid come as well the said Robert S. Bickley by Jared Ingersoll his attorney as the said Samuel Blodgett by Benjamin R. Morgan his attorney and a jury by the Sheriff of Philadelphia County for that purpose duly summoned empaneled and returned being called come to wit Dominick Joice, Paul Beck, Junior, Frederick Mountmollin, Joseph S. Lewis, William Dawson, Thomas Clifford, William Duncan, Thomas Hockley, William McIlhenny, Conrad Hanse, John Dowers, Junior and Samuel Weatherall Junior, being respectively tried, sworn and affirmed are with the consent of the parties aforesaid discharged by the Court from giving their verdict on the issue aforesaid and thereupon the following agreement drawn in writing and duly executed by Jared Ingersoll, Esquire, attorney and in behalf of Robert S. Bickley the plaintiff aforesaid in and by William Rawle, Esquire, attorney and in behalf of Samuel Blodgett the defendant aforesaid is duly filed to wit, Robert S. Bickley *vs.* Samuel Blodgett, Supreme Court of Pennsylvania. It is agreed that the Jury be empowered to act and decide as Referees to determine and order what sum of money if any, is to be paid by the defendant to the plaintiff and if they think proper to order titles and conveyances and
240 other acts by either party to the other as Justice shall require 1801.

I. INGERSOLL,
For the Plaintiff.
W. RAWLE,
For the Defendant.

Whereupon the said Jury as Referees as aforesaid having heard the allegations of the parties aforesaid and their proofs in support thereof and duly considered the same report in the following terms, to wit, Robert S. Bickley Plaintiff *vs.* Samuel Blodgett Jun. Defendant. We the referees in the above action do award that Samuel Blodgett Jun. the defendant do convey or cause to be conveyed in fee simple the Hotel and lots of ground thereunto belonging in the City of Washington to Robert S. Bickley, the plaintiff in this suit and pay to him the said plaintiff the sum of twenty one thousand five hundred dollars with costs of suit for the payment of which sum and performance of this award the property in the City of Washington mortgaged by him to the Commissioners is to be resorted to in the first Instance Philadelphia December 26th 1801. Thomas Hockley, Wm. McIlheeny, Conrad Hanse, William Duncan, Samuel Wetherall, Jun. John Dowers, Jun. Dominick Joyce, Paul Beck, Jun. Fred'k Mountmollin, Joseph S. Lewis, William Dawson, Thomas Clifford, which report of the said Jury as Referees as aforesaid being read in open Court and heard. It is considered

by the Court here that the said Robert S. Bickley do recover against the said Samuel Blodgett the said sum of twenty one thousand five hundred Dollars awarded as aforesaid to be paid by the said Samuel Blodgett to the said Robert S. Bickley and also the costs of
241 suit aforesaid amounting to twenty five pounds one shilling and ten pence and the said Samuel Blodgett in mercy &c., and it is further considered by the Court here that the said report of the said Jury as referees as aforesaid be in all its other parts confirmed and carried into full and complete execution by the parties aforesaid. I, Edward Burd, Prothonotary of the Supreme Court of the Commonwealth of Pennsylvania hereby certify that the within and aforegoing is a true Transcript of the record of a Judgment of said Supreme Court against Samuel Blodgett at the suit of Robert Bickley as the same remains of record in my office. In witness whereof I have hereunto set my hand and affixed the seal of said Supreme Court at Philadelphia this Nineteenth day of February in the year of our Lord MDCCCII.

[SEAL.] EDWD. BIRD, *Proy.*

I, Edward Shippen, Esquire Doctor of Laws Chief Justice of the Supreme Court of the Commonwealth of Pennsylvania hereby certify that the foregoing attestation of the record of a judgment of said Supreme Court is in due form. Witnesseth my hand this 20th day of February, Anno Domini —.

EDWD. SHIPPEN.

(EXHIBIT E.)

* * * * * * *

This Indenture made the twelfth day of January in the year of our Lord one thousand seven hundred and ninety-two be-
242 tween Philip Richard Fendall of Alexandria in the State of Virginia of the one part and Samuel Blodgett Junior of Boston of the State of Massachusetts Merchant of the other part Witnesseth that the said Philip Richard Fendall for and in consideration of the sum of thirty nine thousand five hundred and twenty Mexican silver dollars to him in hand paid by the said Samuel Blodgett the receipt whereof he the said Philip Richard Fendall doth hereby acknowledge, hath given, granted, bargained and sold and doth by these presents give, grant, bargain and sell alien and confirm unto him the said Samuel Blodgett his heirs and assigns forever all that part of a tract of land called Jamaica lying and being in Prince George's County near Georgetown in Maryland beginning at the end of one hundred and eighty nine perches and one half perch on the second line of a tract of land called the widow's mite, it being north seventy five degrees east eleven perches from a bounded stone formerly fixed for the beginning of the aforesaid tract of land called Jamaica and running thence north seventy five degrees east four hundred and ninety one perches to a bounded stone the second boundary of said land then north one degree and

three quarters of a degree west one hundred and seventy one perches and one half perch to a bounded red oak being the then boundary of said land then south seventy four degrees west four hundred and ninety three perches to the end of three hundred and fifty one perches on the second line of the widow's mite then by and with the said second line reversed south one degree east one hundred and sixty one and one half perches to the beginning containing
243 by estimation four hundred and ninety four acres together with all and singular the premises improvements profits and advantages thereunto belonging or in anywise appertaining. To Have and To Hold the aforesaid tract of land and premises with its appurtenances unto him the said Samuel Blodgett his heirs and assigns for ever and to no other intent or purpose whatever. And the said Philip Richard Fendall and his heirs all and singular the hereby granted premises with the appurtenances unto the said Samuel Blodgett his heirs and assigns against him the said Philip Richard Fendall and his heirs and against all and every person and persons whomsoever lawfully claiming or to claim by from or under him them or any of them shall and will warrant and forever defend. In witness whereof the said Philip Richard Fendall hath hereunto set his hand and seal the day and year first above written.

PHIL. RD. FENDALL. [SEAL.]

Signed, sealed and delivered in the presence of

GEORGE FRENCH.
BEN. STODDERT.

Received of the above named Samuel Blodgett the sum of thirty nine thousand five hundred and twenty Mexican silver dollars it being the consideration money above mentioned.

PHIL. RD. FENDALL. [SEAL.]

Witness-:

GEORGE FRENCH.
BEN. STODDERT.

Montgomery County, January 30, 1792, then came Philip Richard Fendall before George French one of the Justices of the peace for Montgomery County and Charles Magruder also a Justice of the peace for said County and acknowledged the within instrument of writing to be his act and deed and the lands and
244 premises therein mentioned to be the right and estate of the within mentioned Samuel Blodgett his heirs and assigns forever according to the true intent and meaning of the said deed and the act of assembly in such case made and provided at the same time came Mary wife of the said Philip Richard Fendall who being privately examined by us out of the hearing of her said husband acknowledged that she relinquished her right of dower to the within land freely and voluntarily without being induced thereto by fear

or threats of ill usage from her said husband or fear of his displeasure.

——— ———.

Acknowledged before us.

GEORGE FRENCH,
CHAS. MAGRUDER.

(EXHIBIT F.)

* * * * * * *

"Superintendant's office, Washington, 29th September, 1802.—It appears by the books in this office that on the division of the land of Samuel Blodgett an original proprietor in the City of Washington made between him and the commissioners in behalf of the United States agreeably to law and the deeds of trust for the lands in said City the following squares & lots were allotted and assigned to the said Blodgett viz: Sq. No. 159, lots No-. 6, 7, 8, 9, 10, 11 & 12. Sq. 182 lots No-. 1 to 17 both inclusive being the whole of the square Sq. 195 the whole square Sq. 156, the whole square Sq. 157, the whole square Sq. 180 the whole square Sq. 193, the whole square Sq. 208 the whole square Sq. 210 the whole square 239 the whole square 241 the whole square north of 242 the whole square No. 277 the whole square 279 the whole square 310 the whole square 308 the whole square 334 the whole square 336 the whole square 337 the whole square north of 237 the whole square west of 309 the whole square 338 the whole square 363 the whole square 365 the whole square 366 the whole square 395 the whole square 396 the whole square 397 the whole square 417 the whole square 442 the whole square 445 the whole square 476 the whole square 478 the whole square East of 475 the whole square north of 508 the whole square 508 the whole square 509 the whole square 519 the whole square 161. lot No. 8 212 lots No-. 5, 6, 7, 8, 9 & 10. 393 lots No-. 1, 2, 3, & 10. 416 lots No-. 1, 2 & 3 361. lots No-. 1, 12, 13 & 14, the whole containing 4,901,255 square feet which is 94,427 square feet over the said Blodgett's due proportion of the land which he has divided a final settlement of the account of divisions between the said Blodgett and the public has not yet been made.

245

THOMAS MUNROE,
Superintendent.

(EXHIBIT G.)

* * * * * * *

This Indenture made the twenty fifth day of September in the year of our Lord one thousand seven hundred and ninety three Between John Baltzer of Frederick Town of the one part and Samuel Blodgett Jun. of Georgetown of the other part Witnesseth that the said John Baltzer in consideration of the sum of fifty pounds current money of Maryland to him in hand paid by the said Samuel Blodgett at or before the ensealing and delivery of

246

these presents the receipt whereof the said John Baltzer doth hereby acknowledge and therefrom doth acquit and discharge the said Samuel Blodgett by these presents hath given, granted, bargained, sold, assigned and set over and by these presents doth give, grant, bargain, sell, assign and set over unto the said Samuel Blodgett all that one lot or parcel of ground lying in the Town of Hamburg in Prince Georges County distinguished in the plat of the said Town by lot No. one hundred with the appurtenances thereunto belonging and all the estate, right, title claim and demand both in law and equity of him the said John Baltzer of in and to the same To Have and To Hold the lot of ground and premises aforesaid with the appurtenances unto the said Samuel Blodgett Junior, his heirs and assigns to the only proper use and behoof of the said Samuel Blodgett his heirs and assigns forever and to and for no other use intent or purpose and the said John Baltzer for himself his heirs, executors and administrators doth covenant, grant and agree to and with the said Samuel Blodgett Junior, his heirs and assigns that he the said John Baltzer, his heirs shall and will warrant and forever defend the lot of ground & premises aforesaid with the appurtenances unto the said Samuel Blodgett Jun. his heirs and assigns forever against all persons whatever excepting the claim of Thomas Beall son of George and John Mackall Gantt under virtue of a deed in Trust from the said Baltzer to them and to one half of the said lot under the said deed in Trust for the use of the public buildings in the City
247 of Washington and the said Baltzer for himself and his heirs doth further covenant and agree to and with the said Blodgett his heirs and assigns that he the said Baltzer, his heirs shall and will at all times hereafter when required make execute and duly acknowledge and other and further deed or deeds conveyance or conveyances for the more perfect securing and assuring the premises aforesaid with the appurtenances unto the said Samuel Blodgett his heirs or assigns. In Testimony Whereof the said John Baltzer hath hereunto set his hand and seal the day and year first aforesaid.

JOHN BALTZER. [SEAL.]

Signed, sealed and delivered in the presence of—
DAN'L CARROLL.
J. M. GANTT.

On the back of which deed was thus endorsed to wit: Received this twenty fifty day of September 1793 of Samuel Blodgett the sum of fifty pounds current money being the full consideration money for the within mentioned lot of ground. Witness my hand.

JOHN BALTZER.

Test:
DAN'L CARROLL.
JNO. M. GANTT.

TERRITORY OF COLUMBIA:

On the day and year within written, John Baltzer within written appeared before me one of the commissionerrs appointed by virtue

of the act of Congress for establishing the Temporary and permanent seat of the Government of the United States and acknowledged this Indenture to be his act and deed and delivered for the uses within mentioned.

DAN'L CARROLL.

Recorded the 29th September 1793. True Copy taken from
248 Liber A No. 1 folio 436 one of the land records of Washington County and District of Columbia & Examined by Uriah Forrest, clk.

(EXHIBIT H.)

* * * * * * *

This Indenture made this eighteenth day of March seventeen hundred and ninety three between David Burnes of the City of Washington and State of Maryland of the one part and Samuel Blodgett Jun. of Boston of the other part Witnesseth that the said David Burnes for and in consideration of the sum of sixty pounds current money of Maryland to him in hand paid the receipt whereof is hereby acknowledged hath given, granted, bargained and sold and by these presents doth give, grant, bargain and sell unto the said Samuel Blodgett Jun, his heirs and assigns all the lot or parcel of ground lying in the City of Washington distinguished by the name of lot number one in square four hundred and thirty one on the present plat of the said City as will particularly appear by reference to the division of the said square on the records of the said Clerk for the District of Columbia and all the right estate and Interest in law and equity of the said David Burnes of in and to the same To Have and To Hold the lot of ground and premises with the appurtenances thereunto belonging to the said Samuel Blodgett his heirs and assigns and the said David Burnes doth hereby covenant and agree with the said Samuel Blodgett Junior that he the said David Burnes
249 the said lot and premises to him the said Samuel Blodgett will forever warrant and defend against all persons whatever. In witness whereof the said David Burnes hath hereunto set his hand and seal the day and year first above written.

DAVID BURNES. [SEAL.]

Signed, sealed and delivered in the present of—
RICHARD CRAMPHIN.
ISAAC WALKER.

On back of which deed was thus endorsed to wit: State of Maryland Prince Georges County 18th March 1793 came David Burnes before the subscribers two of the Justices of the Peace for Prince George's County and acknowledged the within Instrument of writing to be his act and deed and the lot and premises therein mentioned to be the right and estate of Samuel Blodgett Jun. his heirs and assigns.
Acknowledged before

RD. CRAMPHIN.
ISAAC WALKER.

Received March 13, 1793 of Samuel Blodgett Jun, sixty pounds current money of Maryland being the consideration money within mentioned.

DAVID BURNES.

Witness:
Rd. CRAMPHIN.
ISAAC WALKER.

Recorded the 29th August 1794.

250 (EXHIBIT I.)

* * * * * * *

"This Indenture made this eighteenth day of March seventeen hundred and ninety three between David Burnes of the City of Washington and State of Maryland of the one part and Samuel Blodgett Junior of Boston of the other part Witnesseth that the said David Burnes for and in consideration of the sum of sixty pounds current money of Maryland to him in hand paid the receipt whereof is hereby acknowledged hath given, granted, bargained, sold and these presents doth give, grant, bargain and sell unto the said Samuel Blodgett Junior all that lot or parcel of ground lying in the City of Washington distinguished by the name of lot number four in square four hundred and thirty on the present plat of the said City as will particularly appear by reference to the division of the said square on the records of the Cerlk for the District of Columbia and all the estate and Interest in law and equity of the said David Burnes of in and to the same To Have and To Hold the said lot of ground and premises with the appurtenances thereunto belonging to the said Samuel Blodgett his heirs and assigns and the said David Burnes doth hereby covenant and agree with the said Samuel Blodgett Junior that he the said David Burnes the said lot and premises to him the said Samuel Blodgett Junior his heirs and assigns forever will warrant and defend against all persons whatever.

In testimony whereof the said David Burnes hath hereunto set his hand and seal the day and year above written.

DAVID BURNES. [SEAL.]

Signed, sealed and delivered in the presence of—
RD. CRAMPHIN.
ISAAC WALKER.

251 On the back of which deed was thus endorsed to wit: State of Maryland Prince Georges County 18 March 1793 car. > David Burnes before us two Justices of the Peace for Prince Georges County and acknowledged the within Instrument of writing to be his act and deed and the lot and premises therein mentioned to be the right and estate of Samuel Blodgett Junior his heirs and assigns acknowledged before Rd. Cramphin, Isaac Walker.'

Received March 18th 1793 of Samuel Blodgett Jun. sixty pounds

current money of Maryland being the consideration money within mentioned.

DAVID BURNES.

Witness:
RD. CRAMPHIN.
ISAAC WALKER.

Recorded the 29th August 1794.

COMPLAINANT'S EXHIBIT K.

Territory of Columbia, October 22nd, 1792, at a Public Sale of lots in the City of Washington Samuel Blodget Jun. became the purchaser of lot No. Seven in square No. two hundred and twenty five for the consideration of two hundred and sixty six and two thirds dollars subject to the terms and conditions concerning the manner of improvement published and on the further terms of paying down one fourth part of the purchase money, and also paying the residue in three equal annual payments with yearly Interest on the whole principal unpaid, under forfeiture of said fourth to be paid down and he hath accordingly paid the one fourth to wit
252 Sixty Six and two thirds dollars and he or his assigns on making the said other payment, will be entitled to a conveyance of the said lot in fee.

DD. STUART,
DANL. CARROLL,
Commissioners.

Lot No. 7 in Square No. 225.

This certificate was Recorded at the request of the Commissioners the 22nd October 1792.

True Copy taken from Liber B No. 2 folio 294 one of the land Records of Washington County & Examined by—

URIAH FORREST, *Cl'k.*

(EXHIBIT L.)

* * * * * * *

Territory of Columbia, October 22nd, 1792, at a public sale of lots in the City of Washington Samuel Blodgett Jun. of Boston became purchaser of lot number one in square two hundred for the consideration of two hundred sixty six and two thirds dollars subject to the terms and conditions concerning the manner of improvement published and on the further terms of paying down one fourth of the purchase money and also paying the residue in three equal annual payments with yearly Interest on the whole principal unpaid under forfeiture of the said fourth to be paid down, and he hath accordingly paid the said one fourth to wit sixty six and two
253 thirds dollars and he or his assigns on making the said other payments will be entitled to a conveyance of the said lot in fee—(lot number one square 200).

DD. STUART.
DANL. CARROLL.

Recorded 22nd October 1792 (at the request of the Commissioners).

COMPLAINANT'S EXHIBIT N.

Commissioners
to
Samuel Blodgett.

At the request of Samuel Blodgett Jun. the following certificate was recorded, the thirty-first day of August eighteen hundred and one to wit:

TERRITORY OF COLUMBIA:

This is to certify that on the tenth day of October in the year one thousand seven hundred and ninety two Samuel Blodgett Jun. purchased of the commissioners appointed in virtue of an act of the Congress of the United States entitled "An act for establishing the temporary and permanent seat of the government of the United States" Lots numbered twenty two and twenty three in square numbered six hundred and eighty eight for the sum of one hundred and fourteen pounds current money subject to the terms and conditions concerning the manner of buildings and improvements, declared by the president of the United States and the principal and interest of the purchase money for said Lot being paid and satisfied to the commissioners aforesaid it is therefore considered that the said Samuel Blodget Jun. his heirs and assigns, be, and they
254 are hereby entitled to the same Lots in fee simple, agreeably to the acts of Assembly of the state of Maryland in such case made and provided, subject to the terms and conditions aforesaid and subject also to all claims which the holders of prize tickets in the Lotteries commonly called the Hotel Lottery and Washington Lottery No. 2 may have therein as security for complying with the terms of the said Lotteries.

Witness our hands this 31st day of August in the year one thousand eight hundred and one.

WILLIAM THORNTON,
TRISBRAM DALTON,
Commissioners.

True copy taken from Liber G No. 7, folio 261.
URIAH FORREST, *Cl'k.*

COMPLAINANT'S EXHIBIT O.

Deed.

Sam. Blodget
to
U. Forrest & B. Stoddert.

This Indenture made this seventh day of July in the year of our Lord One Thousand seven hundred and ninety-five, Between Samuel

Blodget now of Philadelphia of the one part and Uriah Forrest and Benja. Stoddert of the other part Witnesseth that the said Samuel Blodgett in consideration of one dollar to him in hand paid by the said Uriah Forrest & Banja. Stoddert before the Execution of this indenture the receipt of which is hereby acknowledged and also for other good causes and considerations has granted bargained sold aliened released and confirmed and by these presents doth
255 grant bargain sell alien infeoff release and confirm unto the said Uriah Forrest and Benjamin Stoddert their heirs and assigns all his the said Blodget's lands tenements lots and real estate of what kind and nature whatsoever the same may be situate within the Territory or District of Columbia, together with all and singular the houses buildings improvements, ways, waters, water courses rights privileges hereditaments and appurtenances to the said Real estate or any part thereof belonging or in any manner appertaining and the reversion and reversions remainder and remainders rents issues and profits of the said estate and every part and parcel thereof and all the estate right title Interest property claim and demand both in law and Equity of the said Samuel Blodget of in and to the said Real estate and every part & Parcel thereof, To have and to hold all and singular the hereby bargained and sold land and premises with the appurtenances to the said Uriah Forrest and Benjamin Stoddert their heirs and assigns to the only proper use and behoof of the said Uriah Forrest and Benjamin Stoddert their heirs and assigns forever subject nevertheless to the following proviso that is to say if the said Samuel Blodget his heirs executors or administrators shall well and truly pay and satisfy all prizes which shall be drawn in lottery No. 2 for the improvement of the Federal City to the several persons who shall be entitled to the same in the manner described in a scheme of the said lottery signed by the said Samuel Blodget and Published in the George Town newspaper, and shall in all respects comply with all the duties and engagements in the aforesaid Scheme mentioned on the part of the said Samuel Blod-
256 gett to be done and performed then and in such case and at all times from thence hereafter these presents and all the estate hereby granted and every clause and sentence herein contained shall cease determine and be utterly void to all intents and purposes anything herein contained to the contrary thereof in any wise notwithstanding.

In Witness whereof the said Samuel Blodget hath hereunto set his hand and affixed his seal on the day & year above written.

SAML. BLODGET. [SEAL.]

Sealed and delivered in the presence of—
GUSTS SCOTT.
GEORGE WILSON.

On the back of which deed was thus endorsed to wit:
Received 7th July 1795 of Uriah Forrest & Benjamin Stoddert one dollar being the compensation within mentioned.

SAML. BLODGET.

Test:
GUSTS. SCOTT.

MARYLAND, *Territory of Columbia:*

Personally appeared before me the subscriber one of the commissioners appointed in virtue of the act of congress for establishing the Temporary and permanent seat of the government of the United States the within named Samuel Blodget and acknowledged the within Instrument of writing to be his act and deed and the land and premises therein mentioned to be the right title and
257 Interest and estate of the within named Benjamin Stoddert and Uriah Forrest their heirs and assigns forever, Taken and acknowledged Before me this 8″ day of July 1795.

GUSTS. SCOTT.

Recorded the 24″ July 1795.

True copy from Liber B No. 2, folio 265, one of the land records of Washington County & Examined by—

URIAH FORREST, *Clk.*

COMPLAINANT'S EXHIBIT P.

Uriah Forrest
to
Benjamin Stoddert.

At the request of Benjamin Stoddert the following relinquishment was recorded the second day of September 1801 to wit:

To all to whom these presents shall come or concern Uriah Forrest of the city of Washington Sendest Greeting:

Whereas by Indenture bearing date the seventh day of July in the year seventeen hundred and ninety-five Samuel Blodget therein named did grant, bargain, sell, alien, release and confirm unto the said Uriah Forrest and Benjamin Stoddert therein named their heirs and assigns all his the said Samuel Blodget's Lands, Tenements Lots and real estate of what kind or nature soever situate within the territory or District of Columbia together with all and singular the house, buildings and improvements thereon provided nevertheless that if the said Samuel Blodget his heirs executors and administrators should well and truly pay and satisfy all prizes
258 which should be drawn in the Lottery No. two for the improvement of the Federal City to the several persons who should be entitled to the same in the manner described in a Scheme of the said Lottery signed by the said Samuel Blodget and published in the George Town Newspapers and should in all respects comply with all the duties and engagements in the aforesaid Scheme mentioned on the part of the said Samuel Blodget to be done and performed then and in such Case the said presents and all the estate thereby granted should be utterly void as by the said Indenture reference being thereto had among the Land records of Washington County may appear, and whereas he the said Uriah Forrest not being able to attend to the trusts in the said in part recited Indenture re-

posed in him is desirous to be discharged of and from the same he hath therefore agreed (at the request and with the concurrence of the said Samuel Blodgett) to vest the same exclusively in the said Benjamin Stoddert who hath consented and agreed to accept of the same.

Now know ye, and these presents witness that in pursuance and execution of the premises and for and in consideration of the sum of five shillings current money to the said Uriah Forrest in hand paid by the said Benjamin Stoddert at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged he the said Uriah Forrest (at the request and by the direction and appointment of the said Samuel Blodgett testified by his being a party to and executing these presents) hath granted bargained, sold, aliened, released and confirmed and by these presents doth grant, bargain, sell release and confirm unto the said Benjamin Stoddert his heirs and assigns all and every the Lands tenements, lots,
259 real estate, and hereditaments with the appurtenance which under and by virtue of the said in part recited Indenture were conveyed to him his heirs and assigns in trust as aforesaid and all the estate right title interest trust property claim and demand of him the said Uriah Forrest at Law or in Equity therein or thereto. To Have and to Hold all and singular the said hereditaments and premises with the appurtenances unto the said Benjamin Stoddert his heirs and assigns forever upon the Trusts nevertheless and to and for the intents and purposes and subject to the proviso*e* and agreement in and by the said in part recited indenture expressed and declared of and concerning the same or such of them as are now subsisting or capable of taking effect.

In Witness whereof he the said Uriah Forrest doth hereunto his hand and seal subscribe and set and in approbation whereof he the said Samuel Blodget doth hereunto also his hand and seal subscribe and set this first day of September one thousand eight hundred and one.

URIAH FORREST. [SEAL.]
SAM BLODGET. [SEAL.]

Present.

DISTRICT OF COLUMBIA,
Washington County, ss:

On the first day of September one thousand eight hundred and one before me the subscriber one of the commissioners appointed in virtue of the act of congress entitled "an act for establishing the temporary and permanent seat of the Government of the United States"
personally appeared Uriah Forrest party to the foregoing
260 indenture and acknowledged the same to be his act and deed and the trust thereby relinquished to be vested solely in Benjamin Stoddert therein named; at the same time came Samuel Blodget therein also named and declared that the same trust thereby vested exclusively in the said Benjamin Stoddert was so vested by

and with his direction and appointment according to the true intent and meaning thereof.

Acknowledged before

WILLIAM THORNTON.

True copy taken from Liber G No. 7 folio 265.

URIAH FORREST, *Cl'k.*

Attachment.

26 Dec., 1803.

DISTRICT OF COLUMBIA,
Washington County, To wit:

The United States of America to the Marshal of the District of Columbia, Greeting:

You are hereby commanded to attach the body of Edward Frithy if he shall be found in the County of Washington, and him safe keep, so that you have his body before the circuit Court
[SEAL.] of the district of Columbia, to be held for the county of Washington, on the fourth Monday, of July next, to answer unto the United States, as well touching a certain con-
261 tempt by him committed in not answering.....to the bill of complaint of Robert S. Bickley....against him in the said Court exhibited, as to such other matter and things as shall be then and there alleged against him. Hereof fail not at your peril; and have you then and there this writ.

Witness, William Kilty, esquire, Chief Judge of the said Court, the 26th day of December 1803.

Issued the 4th day of May, 1804.

URIAH FORREST, *Cl'k.*

Marshal's Return.

Cepi brought into Court—

DAN'L C. BRENT, *Marshal.*

Attachment.

26 Dcr., 1803.

DISTRICT OF COLUMBIA,
Washington County, To wit:

The United States of America to the Marshal of the District of Columbia, Greeting:

You are hereby commanded, to attach the body of William Thornton if he shall be found in the county of Washington, and
[SEAL.] him safe keep, so that you have his body before the circuit court of the district of Columbia, to be held for the county
262 of Washington, on the fourth Monday of July next, to answer unto the United States, as well touching a certain contempt

by him committed in not answering.....to the bill of complaint of Robert S. Bickley against him in the said court exhibited, as to such other matter and things as shall be then and there alleged against him.

Hereof fail not at your peril; and have you then and there this writ.

Witness, William Kilty esquire, Chief Judge of the said court, the 26th day of December 1803.

Issued the 4th day of May 1804.

URIAH FORREST, *Clk.*

Marshal's Return.

Cepi brought into Court.

DAN'L C. BRENT, *Marshal.*

Attachment.

Dec'r 26th, 1803.

DISTRICT OF COLUMBIA,
Washington County, To wit:

The United States of America to the Marshal of the District of Columbia, Greeting:

You are hereby commanded to attach the body of Robert Brent if he shall be found in the county of Washington, [SEAL.] 263 and him safe keep, so that you have his body before the circuit court of the district of Columbia, to be held for the county of Washington, on the fourth Monday of July next, to answer unto the United States, as well touching a certain contempt by him committed in not answering.....to the bill of complaint of Robert S. Bickley against him in the said court exhibited, as to such other matter and things as shall be then and there alleged against him. Hereof fail not at your peril; and have you then and there this writ.

Witness, William Kilty, esquire, chief Judge of the said court, the 26th day of December 1803.

Issued the 4th day of May 1804.

URIAH FORREST, *Clk.*

Marshal's Return.

Cepi brought into Court—

DAN'L C. BRENT, *Marshal.*

Petition.

Filed 27 April, 1804.

In Chancery.

ROBERT S. BICKLEY, Complainant,
against
SAMUEL BLODGET, JUN., & Others, Def'ts.

To the Honorable Wm. Kilty, Chief Judge of the Circuit
264 Court of the District of Columbia:

The petition of Robert S. Bickley respectfully represents that your petitioner heretofore filed his Bill of Complaint against Samuel Blodget Jun. and others amongst whom was a certain John Stickney and a certain John Daugherty at that time Residents of the County of Washington in the District of Columbia. That since the filing of his said Bill the said John Stickney and James Daugherty have removed from the district of Columbia, and without the reach of the Process of this Court Your Petitioner therefore prays that your Honor will direct such publication of the object of your Petitioner's Bill of Complaint against the said Blodgett, Stickney, Daugherty and others in the said Bill named as is asked and may comport with Justice and the rules of Court warning the said John Stickney and James Daugherty and each of them to appear by a certain day in such notice to be named to answer, &c.

J. T. MASON,
Solicitor for Complainant.

April 27, 1804.

Whereupon it was ordered by the said court that a Subpœna be issued against the defendants named in the said Bill of Complaint directed to the said defendants and so forth. Thereupon the following defendants named in the said Subpœna being returned summoned appear here in Court by Elias B. Caldwell and Philip Barton Key their attornies to wit Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, Adam Lind-
265 say, Edward Firthey, Francis Lowndes and Samuel Blodgett Junior and as to rest of the defendants being non residents of said District and residing out of the Jurisdiction of this Court it is ordered by the Court here that the following order of publication be made &c., &c. United States District of Columbia & County of Washington October 9th 1802 In Chancery Robert S. Bickley complainant against Samuel Blodgett Junior, Thomas McEwen, William Davidson and William Smith D. D. of the City of Philadelphia and Thomas Peter, Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias Boudinott Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Firthey, James Daugherty, and Francis Lowndes of the District of Columbia and County of Washington aforesaid defendants. The object of the Bill is to obtain in

the first place a conveyance in fee simple to the complainant Robert S. Bickley and his heirs for certain lots known and distinguished in the general plan of the City of Washington in the District of Columbia by lots numbered one, 2, 3, 4, 5 & 14 in square numbered 430 in the said City together with the building thereon usually called the great Hotel and all other rights privileges & appurtenances to the said lots belonging, and secondly to recover the sum of $21500 with interest thereon from the 26th day of December 1801 'til paid and the further sum of £25, 1, 10 for costs of suit all of which were adjudged to him by the Supreme Court of Pennsylvania on the said 26th day of December 1801 as the holder and owner of ticket numbered 37531 in the lottery number one for the improvement of the City of Washington which ticket drew the prize of a Superb Hotel to cost $50,000 and to get paid these sums the bill prays that
266 all the Interest which the said Blodgett had in any real property in the District of Columbia on the 28th day of January 1794 either in law or in equity and which he on that day conveyed to Thomas Johnson Jun, since deceased, and Thomas Peter one of the defendants above named and the survivor of them in Trust to secure the payment of the prizes drawn in the said lottery may be sold to raise and satisfy him the aforesaid sums of money the Bill states that Samuel Blodgett Jun, Thomas McEwen, William Davidson & William Smith D. D. four of the Defendants above named reside in the City of Philadelphia in the Commonwealth of Pennsylvania. That the said Blodgett by his deed of the 28th January 1794 to Thomas Johnson Jun. and Thomas Peter aforesaid and the survivor conveyed a large property in the said District of Columbia subject to the payment of the prizes drawn in the said lottery. That he the said Blodgett (not having satisfied and paid the complainant for the prize so drawn by him as aforesaid) has by sundry deeds since the 28th January 1794 attempted to convey away a part or parts of the property included in that deed to Johnson and Peter to the defendants Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithy, James Daugherty, Thomas McEwen and William Davidson and Francis Lowndes. That the property so attempted to be conveyed to Francis Lowndes as aforesaid is part of square numbered 688 in the City of Washington conveyed to him in Trust for the benefit of the said William Smith D. D. and Benjamin Stoddert that the property so attempted to be conveyed to the said Thomas McEwen and William Davidson is square numbered 193 in the said City of Washington. And it being now to wit this first day of May 1804 after publication
267 made as to the other absent defendants stated by the complainant that John Stickney and James Daugherty two of the defendants in the said bill mentioned have since the filing thereof removed from the District of Columbia and without the reach of the process of this Court. It is therefore on the Complainant's petition ordered that he procure a copy of this notice to be published at least one in each of three successive weeks in the two papers printed in the County of Washington before the 1st day of July next to the intent that the said John Stickney and James

Dougherty have notice of the complainant's application and of the objects of his said Bill and that they be warned to appear here in person or by solicitor on or before the fourth Monday in July next to show cause if any they can why a decree should not pass as prayed. By order of the Honorable William Kilty Chief Judge of the Circuit Court of the District of Columbia.

U. FORREST, *Clk*

This cause by consent of parties and by order of the Court here thereon was continued from Term to term until the Monday of July A. D. 1804. At which said day the following answers were filed to wit The answer of Samuel Blodgett one of the defendants above named The separate answer of Samuel Blodgett to the Bill of Complaint of R. S. Bickley of the City of Philadelphia. This defendant saving to himself now and at all times hereafter all and all manner of benefit and advantage of exception to the many errors and defects in the said bill contained yet for answer thereto or to so much as he is advised is material he answers & says that he
268 admits the plan of the lottery was published by the Commissioners of the City of Washington appointed under an Act of Congress and that the plan of the same was republished by this defendant as their agent and in that capacity at their request. This defendant does not of his own knowledge know that the complainant purchased ticket No. 37531 but leaves him to establish the same by proof. This defendant denies that the tickets and lottery were intrusted solely to the management of this defendant and William Deakins but says that the Commissioners of said City disposed of some of said tickets themselves that they appointed all the managers of the lottery ordered the drawing to proceed and to stop at their pleasure without the advice or consent of the said defendant Blodgett or Wm. Deakins as will appear by their minutes & public advertisements he also denies that the Hotel was ever committed to his care although this was once expected by the defendant as agent. The Commissioners thought proper to assign other duties and directed this defendant to go to the eastward to forward the sales of lots & tickets and to remit the monies assigned for the Hotel either to their Treasurer or to their architect who was directed to found the Hotel on a public lot, or on lots originally intended for their own office which was done, after which this defendant never presumed to interfere with the said Hotel as will appear by the minutes and other books and papers in the office of the Commissioners where it may be seen that the Commissioners themselves gave particular orders for "the workmen to proceed on with the Hotel" and that to this day this building with the lots purchased by their order &
269 those originally in their possession designed & set apart for this building remain in the hands of their successor or successors in office to be given on proper application to the legal possessors of the successful ticket in the lottery. This defendant admits that he gave a bond to the said Commissioners to secure for them the payment of the money prizes and money assigned for the Hotel that might pass through his hands, and that in consequence of the great

losses which are likely to attend the necessary consignments and credits for tickets sold he accepted the proposition of five per centum on the whole sum in hopes this might prove sufficient for his indemnity in which however he was greatly deceived, but he denies that either of the parties to the bond then meant to include the Hotel in the prizes to be paid by either the defendant or by Wm. Deakins as the retention of the title to the lots belonging to the public and to be given therewith will sufficiently demonstrate. Your orator is informed and does not believe that the complainant is the sole owner of the ticket N 37531 but he has heard other persons are interested in said ticket to a larger amount that the complainant who are wholly adverse to his present proceedings against this defendant. Your orator admits that the complainant pretending to be the owner of the said ticket, which was not the case did commence suit against this defendant in Philadelphia when judgment or an award was made as stated in the Bill of Complaint but he denies that he was ever willing that the Jury should act as referees. This defendant at that time being sick and unable to attend Court was led to believe this suit against an agent only the tickets were signed S. Blod-
270 gett, agent, would not be admitted to be tried in that Court Whatever may have been affected by the counsel for this defendant at that time; he denies The power right and authority of said jury and of the said Court of Pennsylvania to make any valid award or to enter valid Judgment that should be binding or obligatory on the lands houses or property of this defendant situate in the Territory of Columbia. That the said Court and Jury could do no act nor enter any judgment other than to effect the person of this defendant or his real estate situated within the limits of Pennsylvania and the Jurisdiction thereof and that everything beyond that is not within their power and void in law, and this defendant says said award of the Jury was made when he was ill and that the same is not Just and fair or equitable and this defendant has reason to believe and does believe that the Jury who made the award in this case were some of them directly or indirectly interested as creditors of Budd & Prior who had just before failed and who claimed and had as this defendant believes one half of the ticket that drew the said prize which the complainant claims and on which he had brought suit against this defendant, this defendant admits he made the deeds referred to and complained of in the said bill of complaint but insists they were made for valuable considerations and not with any improper views or unjust purposes. This defendant further saith that he paid a much larger sum to the Commissioners on account of the Hotel than is set forth by the Complainant and in fact more than he was bound to pay by any agreement obligation or expectation of the said Commissioners at the time and fully according with their scheme of the lottery which states that the whole expences of
271 the lottery shall be deducted from the principal prize in lieu of which the Commissioners obligated themselves to give the whole of the free stone with all the lots annexed to the Hotel to the fortunate possessor of the successful ticket in the lottery—from which last circumstance it will appear that the agency of this

defendant did not extend beyond his responsibility for the money prizes and the cash intended for the Hotel. The amount of the whole lottery being $350,000 and the necessary expenses attending the printing drawing the lottery & commissions allowed to assisting agents &c., were under the usual rates at 5 pr. centum on the gross sum therefore this allowance was cheerfully agreed to by the Treasurer and commissioners when the responsibility contemplated by this defendant was agreed to by him who prays that no change or circumstances may authorize this new construction of these obligations to which pretended construction this defendant presumes is added a neglect on the part of the complainant and of the Jury of referrees to admit either the whole of the money paid by the defendant for account of the hotel or his commissions for the expences & *del credere* &c., attending the care of which were likely to attend the necessary consignments and credits for ticket*s* sold he accepted the proposition of five per centum on the whole sum & responsibility for credits given when the ticket*s* were sold to which credits for Commissions as well as for money paid this defendant is fully entitled and doubts not he can make the same appear by sufficient proof. This defendant feels himself injured by an intimation that the profits of the lottery were assigned to him by the Commis-
272 sioners. To this intimation of the complainant he answers that no profits were ever contemplated either in the lottery or in a final settlement made with the Treasurer on behalf of the Commissioners therefore a less sum only than is usual in such cases was then claimed by this defendant for mere indemnity only against known and expected losses in consequence of the extensive credits necessarily given for the sale of the tickets To these facts he feels it his duty to add that three times the commission of five per centum would not reimburse the losses actually sustained by this defendant exclusive of the trouble & injurious consequences of the pending claim. This defendant prays to be hence dismissed with his reasonable costs in this behalf wrongfully expended without that there is any matter or thing in the said bill material to be answered and not herein sufficiently answered confessed avoided or denied that is true.

PHILIP B. KEY,
Sol. for Blodgett.

August 15th, 1804. then personally appeared the within named Samuel Blodgett and made oath on the holy evangels of Almighty God that the several matters and facts contained in the foregoing answer are just and true as stated to the best of this defendant's knowledge and belief. Sworn to in open Court.

URIAH FORREST, *Clk.*

The defendant Blodgett admits the execution of the various exhibits at this time filed by complainant and that they may be read in evidence.

P. B. KEY.

273 *Answer of William Thornton.*

The separate answer of William Thornton, one of the defendants to the Bill of Complaint of Robert S. Bickley, complainant.

This defendant now and all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that may be had or taken to the many errors uncertainties and manifest insufficiencies in the complainants' said Bill contained for answer thereto or unto so much as this defendant is advised is material or necessary for him to make answer unto he answereth & saith. That Samuel Blodgett did convey to this defendant and others as set forth in the complainants' Bill of Complaint as Trustee for the Washington association and United States Insurance Company the property mentioned for the sole use of the said Company which had founded the objects of their association upon City property in part under certain restrictions—That the property of the said Samuel Blodgett was known to the members of the association to be pledged for the fulfillment of his lotteries No. 1 & 2 that they did not refuse the property of the said Samuel Blodgett as a pledge for stock to a certain amount because they considered it free from any incumbrance as it respected the first lottery for the following reasons 1st they had sufficient evidence that the claims of lottery No. 1 were generally paid by the prizes delivered in—2nd. It was known that the Hotel prize being the highest by the scheme of that lottery was to sustain the whole expenses of the lottery to return part of which the Commissioners gave the lots and free stone. 3rd. That
274 the lowest allowance for indemnification in every case of lotteries is 5 per centum (often 7½), sometimes 10) which would make a deduction of 17,500 Doll. 4th, That Samuel Blodgett having paid $36,000 was conceived to have fulfilled his engagement, unless this common allowance should be denied, which could only leave a small deficiency. 5th, That it was not conceived possible that Samuel Blodgett could be made liable on account of the non-completion of the Hotel; for it was to be presumed that where nothing was to be gained by an agent, nothing could in equity, & Justice be lost by him; especially when the execution of the building was entrusted to the architect engaged by the commissioners to execute the public works, who was conceived the most adequate to the undertaking, & whose judgment & honesty in the execution as well as the expenditure of the monies entrusted to him, to fulfill the object, have never been called in question & although the same was not fully executed because built upon a large scale & with too minute an attention to the quality of the workmanship & materials yet the value considering all circumstances of variation of prices of labor & materials remains on the ground and in corroboration the estimates made by every one in prosecution of the public buildings always fell very far short of the expenditures—That the above reason being deemed sufficient by the Washington association & United States

Insurance Company under certain restrictions & regulations to receive the property mentioned by the complainant as so conveyed it becomes as well a matter of duty in this defendant as a Trustee for the association as of Interest in his capacity of member of
275 the said association to repel the claim of the complainant in seeking redress of any supposed grievances by a sale of any of the property held by the association—This defendant further answering saith that the association are holders of prizes to a large amount in the lotteries No. 1 & 2 received from various individuals to whom stock was issued therefor. That this defendant cannot in equity and good conscience admit the sacrifice of the property of the association to satisfy a subsequent & contingent claim for damages not specified or contemplated in the original scheme of the lottery or mortgage but resting as this defendant conceives on the personal responsibility of the said Samuel Blodgett he having mortgaged the property for the repayment only of the monies received by him, and the defendant being impressed by good reasons to believe which he does fully, that the several sums are paid; admitting the said Blodgett to be allowed even a less compensation and *Del credere* than are usually allowed in such cases. This defendant therefore humbly insists that he is nowise liable or obliged to give up his interest in the property so conveyed by the defendant Blodgett to him and the other defendants in the said Bill named for the benefit of the association aforesaid and this defendant denies all and all manner of unlawful combination without that that there is any other matter cause or thing in the complainants' said bill of complaint contained material or effectual in the law for this defendant to make answer unto, and not herein and hereby well and sufficiently answered avoided traversed or denied is true to the knowledge and belief of this defendant all which matters and things this defendant is
276 ready and willing to aver maintain and prove as this honorable Court shall direct and humbly prays to be hence dismissed with his reasonable costs and charges in the law in this behalf most wrongfully sustained.

WILLIAM THORNTON.

R. W. PEACOCK,
Solicitor for Defendant.

District of Columbia, Washington County, July 31st, 1804—On this day William Thornton the defendant above named appeared before the subscriber a Justice of the Peace for the said County and solemnly affirmed that the allegations in the above answer contained so far as they relate to his own act and deed are true and those arises to the act and deed of others he believes to be true.

Affirmed to before

JOHN OAKLEY.

Answer of E. B. Caldwell.

Filed August 15, 1804.

The answer of Elias B. Caldwell, one of the Defendants to the Bill of Complaint of Robert S. Bickley.

This defendant saving & reserving to himself all and all manner of exceptions and advantages to the manifold errors & inconsistencies in the said Bill contained, in answer thereto or to so much thereof as he is advised is necessary, the answereth and saith—That he believes it to be true that the said Samuel Blodget conveyed in Trust certain lots in the City of Washington to Benjamin Stod-
277 dert, William Thornton, John Stickney & this Defendant, as is set forth in the said Bill of Complaint, but this Defendant has very little recollection of that Deed, and had entirely forgotten it, till called to mind by the aforesaid Bill of Complaint. The other Deed mentioned in the said Bill of complaint to this Defendant, was for the same or nearly the same lots, as were intended to be conveyed in the Deed before mentioned. Perhaps it may include more, of this however, this Defendant is uncertain, never to his recollection having examined the Deed since it was executed. The object of this Deed, as this Defendant understood was to convey certain lots therein mentioned in trust to form part of a fund, for the purposes of Insurance and such other purposes, as the Company might afterwards deem eligable & proper. Upon this Defendant's noticing the mortgages on account of the Lotteries, Mr. Blodgett stated that this Insurance Association would enable him to disencumber the lots of those mortgages, as a great proportion, if not all the ticket & prize holders, would take the stock of the Insurance Company for such tickets & prizes—and it was agreed that Mr. Blodgett should only take out a small portion of the Stock due for his lots, & should file in the Insurance Office, in return therefor, the prizes & tickets for which such stock was exchanged, upon which he should be entitled to more stock.

This Defendant is ready & willing to submit to such order & Decree in the premises as your honors may deem just & proper, & he prays to be hence dismissed with his reasonable costs &c.

E. B. CALDWELL.

278 Elias B. Caldwell being duly sworn saith, that the matters & things in the aforesaid answer contained are true to the best of his knowledge & belief.

Sworn before

W. CRANCH.

Aug. 15th, 1804.

Answer of Thomas Munroe.

The separate answer of Thomas Munroe, Superintendant of the City of Washington, to the bill of complaint exhibited in this Honorable Court against him, the said Thomas Munroe, and others, defendants, by Robert S. Bickley, complainant.

This defendant saving to himself all benefit of exceptions, &c., &c., for answer to the said Bill or to such parts thereof as he is advised it is material for him to answer unto he answereth and saith. That true it is there was such a lottery as is and by the said bill of complaint set forth; that the scheme in and by the said bill set forth and referred to was published and given to the world as is stated in the said Bill. That the then commissioners of Washington City did take for their own security and for the security of the fortunate adventurers in the said lottery such agreement from Samuel Blodgett one of the defendants above named and William Deakins Junior now deceased as is in the bill of complaint stated and exhibited and also such deed from the said Samuel Blodgett to Thomas Peter and Thomas Johnson Junior as is in and by the said Bill of Complaint stated and exhibited. That it is also
279 he believes and admits to be true as stated in the said Bill that lots numbered 1, 2, 3, 4, & 5, in square numbered 430 in the general plan of the said City of Washington are the lots assigned and designated for the said Hotel in the said Bill mentioned but that he believes lot numbered 14, in the said square never was intended for the said Hotel. That in a division of the said square numbered 430 between the commissioners of the City of Washington and David Burnes the original proprietor lots numbered 2, 3, & 5, in the said square were assigned to and became vested in the said Commissioners and that lots numbered 1, 4 & 14 were assigned and belonged to David Burnes. That he has always understood and believes it to be true as stated in the said Bill that David Burnes sold and conveyed lots No-. 1 & 4 in square No. 430 to Samuel Blodgett for the said Hotel. That lot No. 4 aforesaid and lot No. 1 aforesaid are corner lots and that lots No-. 2 & 3 aforesaid are situated between them the four together making the whole front of a small square. That the Hotel actually built occupies the whole front to lot No. 4 and also of lot No. 3 and a part of the front of lot numbered 2. That lot No. 4 aforesaid being conveyed by David Burnes to the said Samuel Blodgett he conveyed the same to the said commissioners not for any pecuniary consideration paid him but with a view that the legal estate of all the ground upon which the Hotel actually stood might be in the commissioners for the better security of the person who by his ticket should be entitled to the said Hotel and in Trust tho- not expressed for such fortunate adventurer in the said lottery this defendant has therefore no objection to the said lot numbered 4 in square 430 being decreed to the complainant
280 without further consideration to him this defendant if the Court should be of opinion that he is entitled to the same.

That with regard to lots No-. 2, 3 & 5 in square 430 the case is different; those lots were originally assigned and belonged to the commissioners for which Samuel Blodgett hath never paid to them one cent, this defendant as before states that he believes they were designated and intended for the said Hotel, this he cannot doubt it is so marked and noted upon the books of the surveyor for the time of the said City of Washington and the Hotel itself is in truth built upon the whole front of the said lot numbered 3 and upon a part of lot numbered two. But this defendant has no reason to believe that the commissioners ever intended to give those lots without being paid for them, and if they did so intend he cannot admit their right or his right to do so. This defendant thinks that the holder of the ticket in the said lottery which drew the Hotel prize is fairly and equitably entitled to have the said lots numbered 2, 3 & 5 in square numbered 430 but he humbly insists that he as Superintendant of the said City ought first to be paid for them their reasonable value by the said Samuel Blodgett and upon these terms he is quite willing this Honorable Court shall decree a conveyance of them to such fortunate holders of the said Ticket. And this defendant believes that the said lot No. 2 is reasonably worth 5 cents per square foot amounting to 250 dollars that the said lot No. 3 is also reasonably worth 5 cents per sq. foot, amounting to 250 dollars and that the said lot No. 5 is also reasonably worth 5 cents pr. sq. foot amounting to 223 dollars & 35 cents. That it is also true as
281 stated in the said bill of complaint that the former commissioners of the said City of Washington on the 8th day of October 1792 sold to Samuel Blodgett one of the defendants lots No-. 4 & 20 in square numbered four and on the 9th of October 1792 lots numbered 21 in square No. 16 and on the 10th day of the same month lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 & 24 in square No. 688 and on the 22nd of the same month lots No-. 1, 4, 5, 7, 14 & 18 in square No. 200 and lots No-. 7 & 9 in square No. 225 and on the 10th day of June 1793 lots numbered 5 in square No. 12 for all which lots the said Blodgett hath fully paid and satisfied the said commissioners and entitled himself to a conveyance for the same and for all which lots certificates in due form of law were made out for the said Blodgett and signed by the said commissioners who as this defendant believes withheld the same from record and also from the possession of the said Blodgett as a security for the fortunate adventurers in the said lottery who should have claims against the said Blodgett. That this defendant in his official character as Superintendant of the said City of Washington now holds the same certificate but is ready to give them up or to do any official act in the premises which this honorable court shall direct provided that if he is decreed to convey the aforesaid lots numbered 2, 3, & 5 in square numbered 430 he shall not be compelled to part with the lots the certificate for which he holds as aforesaid until he is paid for the said lots, 2, 3, & 5 in square 430, and he has no objection to convey the last mentioned lots if he is permitted to hold the others as a security being
282 very ample provided the Court decree them to be subject in the first instance to the payment of the value of the said

lots 2, 3 & 5 and lastly to the wisdom and Justice of this Court the defendant submits himself and the Interest of the United States which he represents and prays to be hence dismissed with his reasonable costs in this behalf sustained, &c.

This day Thomas Munroe the defendant above named made oath that this his answer so far as the same concerns his own act and deed is true of his own knowledge and so far as the same concerns the act and deed of any other person or persons is true as he believes Sworn to in open Court this 30th day of January 1804.

URIAH FORREST, *Clk.*

Answer of Benjamin Stoddert.

This separate answer of Benjamin Stoddert, one of the defendants therein named, to the bill of complaint exhibited in this Honorable Court by Robert S. Bickley, against the said Benjamin Stoddert & others, defendants.

This defendant saving to himself all exceptions, &c., &c., for answer to such parts of the said Bill of Complaint as he is advised it is material for him to answer unto he answereth and saith true it is that Samuel Blodgett one of the defendants in the said Bill named did as he believes execute to Thomas Peter & Thomas Johnson Jun., since deceased such deed as is in the said Bill stated bearing date the 28th day of January 1794 and for the purposes in the said deed expressed that he also believes it to be true that the said deed
283 does comprise and include all the property mentioned in the bill of complaint to be included therein and in the manner therein stated That it is also true that the said Samuel Blodgett did on the 7th day of July 1795 execute such other deed as the complainant hath in his bill set forth and for the purposes therein mentioned to this defendant and Uriah Forrest and he admits that this latter deed includes property conveyed by the former and was meant to do so and he also admits that so far as they interfere this last deed cannot control the first but can only operate upon any overplus that may remain of property after fulfilling and satisfying the trusts declared in and provided for by the first deed. He also admits that Uriah Forrest as stated in the said bill of complaint did by deed dated the 1st day of September 1801 reject and withdraw from the trusts reposed in him by the said deed of the 7th July 1795 and did thereby release and transfer the whole of the said trust to this defendant and therefore at this time hath nothing to do with the business. This defendant further answering admits that afterwards on or about the — day of —— the said Samuel Blodgett for the purpose of creating a fund for an Insurance Company did convey certain property mentioned in the deed by which the same was conveyed to this defendant, Elias B. Caldwell, William Thornton & John Stickney, but this defendant expressly denies that the same was done with his privity knowledge or consent or that he has anything to do therewith, one half of said property so conveyed still

belongs to the said Blodgett he having drawn no shares therefor he admits that if the said last mentioned deed comprizes any
284 of the property conveyed or assured by that of the 28th January 1794, or by that of the 7th of July 1795, hereinbefore mentioned that it must be subservient and yield to the trusts declared and secured by the said prior deeds, and this defendant further answering saith true it is that by a deed bearing date on the 1st day of September 1801 this defendant & Samuel Blodgett the other Defendant did convey part of square 688 as particularly described in the said deed to Abraham Lindsay one other defendant in the said Bill named that the reason which induced him this defendant to join in that deed was as follows that believing the property conveyed by the deed of the 28th January 1794 to Thomas Peter and Thomas Johnson Junior to be greatly more than sufficient to answer all claims upon the same on account of the first lottery independent of the said square No. 688 and that Samuel Blodgett as an inducement and Justification to and for this defendant to convey the said property deposited with this defendant a ticket drawn in the lottery No. 2 (which the said Deed of the 7 July 1795 was meant to secure) entitled to a prize of one thousand dollars but this defendant admits that if in this opinion he erred the said property so conveyed to the said Lindsay must stand subject to any just claim that may exist under the said deed of the 28th January 1794 but he humbly hopes that all the other property comprized in and conveyed by the said deed of the 28th January 1794 will be sold and applied before the said Lindsay will be disturbed in his possessions, and this defendant also admits that on the said first day of September 1801 the said Samuel Blodgett did convey to the said Francis Lowndes in the Bill named all the residue of the said square
285 No. 688 not conveyed to the said Lindsay in Trust to raise money to save harmless and indemnify this defendant and William Smith also in the bill named for a certain responsibility they had incurred or might incur as the special bail of the said Blodgett in a certain suit brought against him in Philadelphia which deed this defendant also admits can have no operation, until all the trusts declared and secured in and by the said deeds of the 28th January 1794 and 7th July 1795 are fully executed satisfied and provided for, but this defendant humbly hopes and insists that this his security ought not to be taken from him until all the other property secured by the said deeds shall be sold and applied to the purposes in the said deeds provided for and be found inadequate thereto. This defendant submits himself to the justice of this honorable Court in all things relating to the premises and prays to be hence dismissed with his reasonable costs, &c.

DISTRICT OF COLUMBIA,
Washington County, To wit:

Benjamin Stoddert the defendant above named made oath that this his answer so far as the same concerns his act & deed is true of his own knowledge and so far as the same concerns the act and

deed of any other person or persons is true as he believes sworn to this 21st day of Jan. 1804.

THOMAS CORCORAN.

Separate Answer of Thomas Peter.

Filed Jan'y 30, 1804.

The separate answer of Thomas Peter, one of the Defendants therein named, to the Bill of Complaint exhibited in this
286 Honorable Court by Robert S. Bickley, Complainant, against him, the said Thomas Peter and others, Defendant.

This Defendant saving to himself all benefit of exception &c., &c., for answer to so much of the said Bill as he is advised it is material for him to answer unto he answereth and saith true it is that as stated in the said Bill of Complaint Samuel Blodgett one of the Defendants in the said Bill named did on or about the 28th day of January 1794 execute such Deed as the Complainant exhibits and refers to marked Complainant's Exhibit C. to him this Defendant and one Thomas Johnson Junior since deceased to which Deed this Defendant for greater certainty prays leave to refer and that the same may be taken as a part of this his answer. That the said Deed was executed as this Defendant admits and believes at the instance of the then Commissioners of the City of Washington named in the said deed and to secure the punctual payment of the prizes drawn in the lottery mentioned in the said Deed for which Samuel Blodgett was or should be answerable all which is expressed in the said Deed. That this Defendant knows not what property is included or comprehended by the said Deed but this Defendant further answering admits that whatever property he does hold in virtue of the said Deed is held by him in trust for the purposes in the said Deed mentioned and subject to any order or decree which this Honorable Court shall make respecting the same to whose wisdom and justice this Defendant submits himself in the premises and prays to be hence dismissed with his reasonable costs in this behalf expended.

287 District of Columbia &
County of Washington, To wit:

This day Thomas Peter the Defendant within named made oath that this his answer so far as the same concerns his act and deed is true of his own knowledge and so far as the same concerns the act and deed of any other person is true as he believes. Sworn to before me this twenty sixth day of January 1804.

WILLIAM THORNTON.

Separate Answer of Francis Lowndes.

The separate answer of Francis Lowndes, one of the defendants named in the bill of complaint of Samuel S. Bickley.

This defendant saving to himself all exceptions &c. for answer saith he believes Samuel Blodgett did make and execute the deed to this defendant mentioned in the complainant's Bill that it was done without his knowledge at the time for the purpose of securing Smith and Stoddert therein named that this defendant has no Interest in the property but stands as a mere Trustee. This defendant is satisfied to abide by any decision the Hon'ble Court may make and prays to be hence dismissed with his reasonable costs and charges.

DISTRICT OF COLUMBIA,
County of Washington, To wit:

Francis Lowndes the above named Defendant made oath that this his answer is true. Sworn to this fourth day of May 1804.

JOHN OAKLEY.

288 *Separate Answer of Edward Frithy.*

Filed July 31, 1804.

The Separate answer of Edward Frithy, one of the defendants to the bill of complaint of Robert S. Bickley, Complainant.

This defendant now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception, that may be had or taken to the many errors, uncertainties and manifest insufficiencies in the Complainant's said bill contained, for answer thereto, or unto so much as this defendant is advised is material or necessary for him to make answer unto he answereth and saith,

That true it is that Samuel Blodget one of the defendants named in the said bill did lease to this defendant a part of Lot No. 20 in Square No. 254—but this defendant did very soon after assign all his right title & interest of and in the same, to a certain Frederick Betz of the County of Washington, and since that period of transfer, this defendant hath had no interest in the said part of Lot No. 20 in Square No. 254—he having by the said Transfer vested all his right, interest and Estate therein in the said Betz.

And this Defendant denies all and all manner of unlawful combination & confederacy, without that, that there is any other matter, cause or thing in the Complainant's said bill of complaint contained, material or effectual in the Law for this defendant to make answer unto, and not herein and hereby well and sufficiently an-
289 swered, avoided, devised or decreed is true to the knowledge & Belief of this defendant all which matters and things this

defendant is ready and willing to maintain aver and prove as this honorable Court shall direct & humbly prays to be hence dismissed with his reasonable costs and charges in the Law, in this behalf most wrongfully sustained.

EDW. FRITHY.

R. W. PEACOCK,
Sol'r for Def't E. Frithey.

DISTRICT OF COLUMBIA,
County of Washington, To wit:

On this 30" day of July 1804, Edward Frithey personally appeared before the Subscriber a Justice of the peace for the said County, and made oath that the allegations contained in the above answer as far as they concern his own act and deed are true, and those which relate to the act & deed of others he believes to be true.

Sworn to before

WILLIAM THORNTON.

Answer of Robert Brent.

The separate answer of Robert Brent, one of the Defendants named in the bill of complaint of S. Bickley.

This defendant saving to himself all exceptions &c., for answer saith that he has long since made a deed for Lot No. 46 in Georgetown sold to Samuel Blodgett for the conveyance of which this
290 defendant had given his bond as stated in the Bill of Complaint. This defendant further saith that at the particular request of Benjamin Stoddert Esquire stating that the bond for the conveyance had been passed to him & which bond he had mislaid as will more fully and at large appear by three several letters from said Stoddert Marked No. 1, 2 & 3 the conveyance was made. This defendant prays that these letters may be taken as part of this his answer. This defendant having full and entire confidence in the representation of said Stoddert did not hesitate in granting his request not doubting at that time nor does he at all doubt at this the representation made by him in these letters. This defendant is satisfied to abide by the decision of the Hon'ble court & prays to be dismissed with his reasonable costs and charges &c.

ROBERT BRENT.

WASHINGTON COUNTY, *To wit:*

Robert Brent came before the Circuit Court for the District of Columbia now sitting in the County of Washington & made oath that the facts stated in this answer in chancery so far as they are stated from his own knowledge are just and true & that so far as it is stated as from the information of others he believes to be true.

Sworn to in open Court.

URIAH FORREST, *Clerk.*

291 *Agreement of Counsel.*

Filed 24 Sep., 1804.

In Chancery.

ROBERT S. BICKLEY
vs.
SAMUEL BLODGET, and Others.

It is agreed by the Complainant and the Defendants in this cause, by their Solicitors that a decree shall pass immediately by consent for conveying to the Complainant the Hotel/ and the lots appropriated for the same. That the execution and truth of all the exhibits referred to in and by the Complainants is hereby admitted, all form as to the *of* proceeding wa-ved. This admission in no wise to give validity or authenticity to the award obtained in the Court of Pennsylvania or the Judgment thereon rendered but that is to stand on its own merits unaf-ected by this agreement.

JOHN T. MASON,
For Compl't.
PHILIP B. KEY,
For the Def'd't Blodgett.

This cause set down by consent for hearing at the next term.

J. T. MASON,
For Compl't.
PHILIP B. KEY,
For Def'd't-, for Whom He Appears.

292 *A Statement of the Sales Made by Daniel C. Brent, Trustee, under a Decree of the Circuit Court of the District of Columbia for the County of Washington in the Case of Robert S. Bickley against Thomas Peters & Others.*

No. of square.	Number of lotts.	Amount.	Purchasers' names.	Indorsers' names.
195.....	Whole square.....	$415	George Budd.....	
159.....	6, 7, 8, 9, 10, 11, 12...	315	George Budd.....	
225.....	7.....	305	George Budd.....	
4.....	4 and 20.....	105	George Budd.....	
16.....	21.....	50	George Budd.....	
12.....	5.....	50	George Budd.....	
193.....	Whole square.....	245	George Budd.....	
688.....	1.....	195	George Budd.....	
"	11.....	499.80	George Budd.....	
"	12.....	499.80	George Budd.....	
"	15.....	777.96	George Budd.....	
"	17.....	983.78	George Budd.....	
"	20.....	551.05	George Budd.....	
"	21.....	838.65	George Budd.....	
"	Part of lott No. 24....	224.05	George Budd.....	
		$6055.09		

Statement of the Sales Made by Daniel C. Brent, Trustee, etc.—Continued.

No. of square.	Number of lotts.	Amount.	Purchasers' names.	Indorsers' names.
277.....	Whole square.....	170	Henry Pratt.....	
East of 475.....	Whole square.....	75	Henry Pratt.....	
182.....	Whole square.....	402	Henry Pratt.....	
212.....	Lotts No. 5. 35	....	Henry Pratt.....	
"	Lott No. 6..... 36	....	Henry Pratt.....	
"	Lott No. 7..... 44	....	Henry Pratt.....	
"	Lott No. 8..... 41	....	Henry Pratt.....	
"	Lott No. 9..... 38	....	Henry Pratt.....	
"	Lott No. 10..... 34	....	Henry Pratt.....	
		— 238		
293				
84.....	Lott No. 10.....	103	Henry Pratt.....	
225.....	The west part of lott No. 9	305	Henry Pratt.....	
200.....	Lott No. 1..... 120	....	Henry Pratt.....	
"	Lott No. 4..... 128	....	Henry Pratt.....	
"	Lott No. 5..... 190	....	Henry Pratt.....	
"	Lott No. 7 165	....	Henry Pratt.....	
"	Lott No. 14..... 175	....	Henry Pratt.....	
"	Lott No. 18..... 600	....	Henry Pratt.....	
		— 1378		
156.....	Whole square.....	220	Henry Pratt.....	
157.....	Whole square.....	205	Henry Pratt.....	
180.....	Whole square.....	170	Henry Pratt.....	
208.....	Whole square.....	160	Henry Pratt.....	
210.....	Whole square.....	190	Henry Pratt.....	
239.....	Whole square.....	200	Henry Pratt.....	
241.....	Whole square.....	205	Henry Pratt.....	
279.....	Whole square.....	130	Henry Pratt.....	
310	Whole square.....	60	Henry Pratt.....	
336.....	Whole square.....	135	Henry Pratt.....	
337.....	Whole square.....	85	Henry Pratt.....	
338.....	Whole square.....	75	Henry Pratt.....	
363.....	Whole square.....	205	Henry Pratt.....	
365.....	Whole square.....	225	Henry Pratt.....	
366.....	Whole square.....	150	Henry Pratt.....	
		$5091		
495.....	Whole square.....	110	Henry Pratt.....	
397.....	Whole square.....	105	Same.....	
417.....	Whole square.....	105	Same.....	
442.....	Whole square.....	205	Same.....	
445.....	Whole square.....	280	Same.....	
294				
478.....	Whole square.....	110	Same.....	
508.....	Whole square.....	95	Same.....	
509.....	Whole square.....	250	Same.....	
519.....	Whole square.....	115	Henry Pratt.....	
North of 242...	Whole square.....	80	Same.....	
North of 396...	Whole square.....	80	Same.....	
North of 508...	Whole square.....	45	Same.....	
161.....	Lott No. 8.....	45.	Same.....	
393.....	Lotts No. 1, 2, 3 & 10.	70	Same.....	
688.....	Lott No. 2.... 125.80			
"	Lott No. 3.... 178.28			
"	Lott No. 4.... 139.88			
"	Lott No. 5.... 224.38			

Statement of the Sales Made by Daniel C. Brent, Trustee, etc.—Continued.

No. of square.	Number of lotts.	Amount.	Purchasers' names.	Indorsers' names.
688.....	Lott No. 6 ... 293.42			
"	Lott No. 8.... 145.87			
"	Lott No. 9.... 181.71			
"	Lott No. 10.... 302.25			
"	Lott No. 13.... 546.00			
"	Lott No. 14.... 698.87			
"	Lott No. 16.... 559.52			
"	Lott No. 19.... 699.40			
		4095.38	Henry Pratt.....	
416....	Lotts No. 1, 2, 3.....	40.	Same.....	
	Ground rent on James Dougherty's lease..	360.	Same.....	
		$11,281.38	Henry Pratt.....	
334.....	Whole square.....	94.	James Mathers...	Charles H. Varden, John Dempsie.
225.....	Part of lott No. 9, east side	900	Doct. William Thornton.	Ann Brodeau, Thomas Herty.
254.....	Lott No. 21.....	405	Phineas Bradley..	Abraham Bradley, Jun'r.
295				Robert F. How.
308.....	Whole square.....	50	Charles H. Varden	
396.....	Whole square.....	55	Charles H. Varden	
476.....	Whole square.....	50	Charles H. Varden	
688.....	Lott No. 18	931.08	Charles H. Varden	James Mathers. John Dempsie.
361.....	Lotts No. 1,12,13 and 14	95.	Ezra Varden.....	Charles Varden. Adam Lindsay.
688.....	Lott No. 7.....	297.24	Peter Lennox....	James Hoban. James Mathers.
688.....	Part of lott No. 23....	99.96	Adam Lindsay...	William Emack. Washington Boyd.
	Ground rent on Edward Frithy's lease.	400.	Robert F. Howe.	Abraham Bradley, Jun'r. Pheneas Bradley.

Jan'y 21, 1806.

DANIEL C. BRENT, *Trustee.*

Expenses Incurred in Executing the Decree of the Circuit Court of the District of Columbia in the case of Robert S. Bickley vs. Thos. Peters & Others.

To Samuel H. Smith for inserting the advertisement in the National Intelligencer..... $10.
" William Duane for ditto in the daily Aurora..... 8.25
296

To William Rind for ditto in the Washington Federalist... 9.
" Nicholas King, surveyor of the City of Washington—(torn out)—out of 51 squares & 56/100..... 25.50
Postage ..... .72
Bellman ..... 1.

$54.47

E. E.

DANIEL C. BRENT, *Trustee.*

And now here at this day to wit the — July in the year of our Lord eighteen hundred and four all and singular the premises being seen and fully inspected by the said Court and mature deliberation being thereupon had the Court here decree as follows, to wit:

ROBERT S. BICKLEY

vs.

THOMAS PETER, THOMAS MUNROE, ROBERT BRENT, BENJAMIN STODDERT, ELIAS BOUDINOTT CALDWELL, WILLIAM THORNTON, JOHN STICKNEY, ADAM LINDSAY, EDWARD FRITHEY, JAMES DAUGHERTY, FRANCIS LOWNDES, SAMUEL BLODGETT, THOMAS MCEWEN, WILLIAM DAVIDSON and WILLIAM SMITH, Defendants.

297 In Chancery for the Circuit Court of the District of Columbia and County of Washington.

The Court being satisfied in this cause that Thomas McEwen, William Davidson and William Smith, John Stickney and James Daugherty five of the defendants above named at the time of filing this bill resided and still do reside without the District of Columbia and without the reach of the process of this Court sundry orders were heretofore made in this cause directing such notice of the said bill and of the object thereof to be given in certain newspapers as to this Court seemed proper warning the said defendants McKeowin, Davidson, Smith, Stickney and Daugherty and each of them to appear in this Court in person or by Solicitor on or before a certain day or days therein limited and expressed which days are now past to show cause if any they or any of them had why a decree should not be passed according to the prayer of the said bill and it appearing to this court now here that the said orders for giving notice have been fully and regularly complied with and the said Defendants McKeowin, Davidson Smith Stickney and Daugherty and each of them having failed to appear in this Court in person or by Solicitor the said Bill and everything therein contained as to them the said McKeowin Davidson, Smith Stickney and Daugherty and each of them is taken for confessed, and the said Defendants Thomas Peter, Benjamin Stoddert, Thomas Munroe, Robert Brent, Elias Boudinott Caldwell, Francis Lowndes and Adam Lindsay having filed their answers admitting the allegations in the said bill contained and submitted their case to the decision of this Court, and the said Edward Frithey one other of the defendants having filed his answer alleging that
298 he has parted with all the interest which he had in the lot in the lot in the bill mentioned stated to be in his possession and the said Samuel Blodgett and William Thornton two others of the defendants in this cause named having also filed their answer denying in part the equity of the complainant but the said Samuel Blodgett and William Thornton by their Solicitor at this time consenting that a decree of this Court shall pass for conveying to the complainant the Hotel in the Bill of Complaint mentioned and the lots or portions of ground appurtenant thereto and that this cause be set down upon the answers and exhibits for hearing and decree

at the next Term. It is thereupon this first day of October one thousand eight hundred and four by William Kilty Chief Judge and William Cranch assistant Judge and by the authority of this Court and by and with the consent of the parties aforesaid to this suit to wit Blodgett and Thornton decreed ordered and adjudged that the defendants Samuel Blodgett Junior and Thomas Peter by a deed or deeds good and operative in law to be acknowledged and recorded as the law directs shall convey bargain and sell release and confirm to the said Robert S. Bickley and his heirs in fee simple all that lot or portion of ground in the City of Washington and District of Columbia known and distinguished in the plan of the said City by lot numbered one in square number four hundred and thirty with all the buildings and improvements thereon or thereunto belonging or in any wise appertaining. And it is further adjudged ordered and decreed by the authority aforesaid that Thomas Munroe one other of the defendants above named do as Superintendant for the affairs of the said city of Washington by a deed or deeds good
299 and operative in law to be acknowledged and recorded as the law directs convey and assure to the said Robert S. Bickley the complainant and his heirs in fee simple all those lots or portions of ground situate and being in the said City of Washington and known and distinguished in the general plan of the said City by lots numbered one, two, three, four, and five respectively in square numbered four hundred and thirty with all the buildings improvements, rights, privileges and appurtenances thereupon being or thereunto in any wise belonging or appertaining. And as to all the property in the said Bill of complaint mentioned, and as to all the objects of the said bill not in and by this decree finally specially and particularly decreed upon this cause is retained for further proceedings hereafter to be had thereupon and that purpose it is ordered that the said cause be set down for hearing and decree at the next Term upon the bill & exhibits of the complainant and the answers of the defendants filed and that the same be continued until the next Term.

By order.

URIAH FORREST.

* * * * * * *

300

Decree.

ROBERT S. BICKLEY
v.
THOMAS PETER, THOMAS MUNROE, ROBERT BRENT, BENJAMIN STODDERT, ELIAS B. CALDWELL, WILLIAM THORNTON, JOHN STICKNEY, ADAM LINDSAY, EDWARD FRITHEY, JAMES DOUGHERTY, FRANCIS LOWNDES, SAMUEL BLODGETT, THOMAS MCKEWEN, WILLIAM DAVIDSON, and WILLIAM SMITH, Defendants.

In Chancery. In the Circuit Court for the District of Columbia and County of Washington.

This Court having heretofore to wit on the first day of October 1804 in part acted upon this case and having then passed a decree

as to a part of the subject matter stated in the said Bill of Complaint it is this fourth day of October 1805 by William Kilty Chief Judge and William Cranch and Nicholas Fitzhugh assistant Judges and by the authority of this Court further decreed ordered and adjudged that the said Samuel Blodgett Junior the Defendant do and shall pay to the said Robert S. Bickley the Complainant on or before the 22d day of November next ensuing the sum of twenty six thousand and six hundred and thirty five dollars and thirteen cents current money of the United States it being the amount of the Debt due from the said Defendant Blodgett to the said Complainant with interest thereon computed to the 22d day of November 1805 and that the said Blodgett the Defendant do also on or before the day
301 above limitted pay to the said complainant his costs about this suit expended to be taxed by the Clerk of this Court amounting to the sum of — like current money of the United States. And if the said Blodgett shall fail to pay the said several sums of money or either of them or any part thereof to the said complainant on or before the day above limitted then and in that case it is decreed ordered and adjudged by the authority aforesaid that the following squares lots and portions of ground situated in the said City of Washington or so much thereof as shall be sufficient to raise and pay the said several sums of money or such part thereof as shall be unpaid on the said 22d day of November 1805, exclusive of and over and above the costs of executing this Decree be sold; that is to say, Square numbered 195 Square numbered 277, Square numbered 334 Square West of Square numbered 309 Square East of Square 475. Lots numbered 6, 7, 8, 9, 10, 11, 12 in square numbered 159. Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 in Square numbered 182. Lots 5, 6, 7, 8, 9, 10 in Square numbered 212. Lot numbered 10 in Square numbered 84. Lots numbered 7 & 9 in Square numbered 225. Lots numbered 1, 4, 5, 7, 14, 18 in Square numbered 200. Lot numbered 21 in Square numbered 254. Lots numbered 4 & 20 in Square numbered 4. Lot numbered 21 in Square numbered 16. Lot numbered 5 in Square numbered 12. Square numbered 193. Also Squares numbered 156, 157, 180, 208, 210, 239, 241, 279, 308, 310, 336, 337, 338, 363, 365, 366, 395, 396, 397, 417, 442, 445, 476, 478, 508, 509, 519. Square North of Square numbered 242. Square north of Square numbered 337. Square
302 north of Square numbered 396 and Square North of Square numbered 508 and also the following lots to wit Lot numbered 8 in Square numbered 161. Lots numbered 1, 12, 13 & 14 in Square 361. Lots numbered 1, 2, 3 & 10 in Square numbered 393. Lots numbered 1, 2 & 3 in Square numbered 416.

And it is further ordered and decreed by the authority aforesaid that certain ground rents reserved by the said Defendant Blodget by Indenture made between the said Samuel Blodgett of the one part and Edward Frithey one of the Defendants aforesaid of the other part bearing date on the 4th day of April 1801 and certain other ground rents reserved by the said Samuel Blodgett by Indenture made between the said Samuel Blodgett of the one part and James

Dougherty one of the said defendants of the other part bearing date on the 13th day of April 1801 be also sold for the purposes aforesaid.

And also that all that Square in the said City of Washington known and distinguished in the plan of the said City by Square numbered 688 be sold for the purposes aforesaid except that part of the said square alleged to be sold and conveyed by the said Samuel Blodgett and Benjamin Stoddert to Adam Lindsay one of the Defendants herein named which part of the said square so excepted is bounded as follows Beginning for the part so excepted at the North east corner of the said Square and running thence with a line of first Street, East one hundred and twenty five feet three inches to an alley twenty feet wide thence with the line of the said Alley West fifty two feet thence North one hundred and twenty five feet three inches and from thence to the beginning which said part of
303 the said square so excepted is reserved for the further order and decree of this Court in the premises.

And it is further decreed by the authority aforesaid that Daniel Carrol Brent be and he hereby is appointed Trustee for making said sale and that the course and manner of his proceeding be as follows:

He shall first file with the Clerk of this Court a bond to the United States executed by himself and a surety or sureties by this Court or by two of the Judges thereof to be appro- in the penalty of fifty three thousand dollars conditioned for the faithful discharge of the trusts reposed in him by this Decree or to be reposed in him by any future order of this Court made in the premises.

He shall then give notice by advertisements inserted three weeks successively in the National Intelligencer The Washington Federalist and in one of the newspapers printed in Philadelphia, of the time place and manner of such sale which shall be on a credit of 6 & 9 months by equal moieties. The Purchasers giving their notes with approved Indorsers negotiable at the Bank of Columbia or the Branch Bank of the United States in the City of Washington.

The Trustee shall then proceed to sell the whole of the said property so decreed to be sold or so much thereof as will raise over and above the expenses attending the execution of this Decree the two several sums of money hereinbefore Decreed to be paid to the said Complainant or so much thereof as shall remain unpaid on the said twenty second day of November 1805, and shall sell the same at public auction to the highest bidder, and as soon as conve-
304 niently may be after the said sale the said Trustee, shall return to this Court, with an affidavit of the truth thereof annexed, a full and particular account of his proceedings under this decree and upon the approbation confirmation and ratification of the said sale by this Court and upon the payment of the whole purchase money for the respective parts of the said property so sold and not before the said Trustee by a Deed or Deeds good and operative in law to be acknowledged & recorded as the law directs shall give grant bargain & sell release & confirm to the respective purchasers and their heirs respectively as the case shall require all the right title and interest therein which was or is in the said Samuel Blodgett, and all the right title or interest therein which the said Thomas Peter de-

rived in and thereto by virtue of the Deed in the said Bill of Complaint mentioned to have been given by the said Samuel Blodgett to the said Thomas Peter and Thomas Johnson Junior since deceased bearing date on the twenty eighth day of January one thousand seven hundred and ninety four, or which the said Thomas Peter hath in any way since that time to the same or any part thereof by through or from the said Samuel Blodgett, and also all the right title and interest which the said Benjamin Stoddert, Francis Lowndes, Thomas McEwen, William Davidson and William Smith the defendants or any of them or any other of the Defendants in the said Bill named have in and to the same or any part thereof and which they or any of them derived from by or through the said Samuel Blodgett in any manner since the s- twenty eighth day of January one thousand seven hundred and ninety four, and also all the right interest and estate which the said Thomas Munro
305 the Defendant has in and to the same as Superintendent of the said City of Washington; and the purchaser or purchasers respectively and their respective heirs shall thereupon hold the same by them respectively purchased free clear and discharged from all claims of the said Samuel Blodgett and from all claims of the said Thomas Peter, Thomas Munro, Benjamin Stoddert, Francis Lowndes, Thomas McEwen, William Davidson and William Smith or any of them or any other of the Defendants in the said Bill of Complaint named, which they or any of them may have derived in manner aforesaid. The money by the said Trustee received in virtue of this Decree shall be brought into this Court to be disposed of as this Court shall direct.

And it is further ordered and decreed by the authority aforesaid that the Defendant Thomas Peter upon the request of the said Trustee to join and become a party in and to all the Deeds by the said Trustee in virtue of this Decree to be executed.

And it is further Decreed by the authority aforesaid that all cases of deeds to be executed by the Trustee in virtue of the Decree for property where the outstanding legal title now remains in the said Thomas Munro as Superintendent for the City of Washington he Thomas Munro as superintendent for the said City of Washington shall at the request of the said Trustee join in and become a party to such Deed.

And the said Trustee for the whole trouble and expense by him incurred in the execution of this Decree and in the performance of this trust shall hereafter be allowed such Commission as to this Court shall appear just and reasonable on consideration of the at-
306 tention fidelity and zeal wherewith he shall appear to have discharged the trust herein and hereby reposed in him.

And lastly as to all the property in the said Bill of Complaint mentioned and as to all the objects of the said Bill not in and by this Decree specially and particularly decreed upon this cause is retained for further proceedings hereafter to be had thereupon and for that purpose is ordered to be continued.

Provided nevertheless that if the said Thomas McEwen his heir heirs devisee or representative or the said William Davidson his heir

heirs devisee or representative or the said John Stickney his heirs devisees or representatives or the said James Dougherty his heirs devisees or representatives or the said William Smith his heir heirs devisee or representative or any of them shall appear in this Court at any time within eighteen Calendar months from the date of this Decree and require a review of the same, this Court will upon a bill filed by such person or persons their heirs devisee or representative proceed to examine into the matters in dispute and proceed to a final decree in the same manner as if the said person or persons had originally appeared before them.

By order

WM. BRENT, *Clk.*

307 *Bond.*

Thereupon the said Daniel Carroll Brent Trustee as aforesaid files in Court here the following Bond, to wit:

Know all men by these presents that we Daniel Carroll Brent Robert Brent and Daniel Brent all of the City of Washington are held and firmly bound unto the United States of America in the full and Just sum of fifty three thousand Dollars to the payment of which we do bind ourselves our heirs executors and administrators jointly and severally firmly by these presents. Witness our hands and seals this fourteenth day of November in the year Eighteen hundred & five. Whereas in a certain suit or controversy depending on the chancery side of the Circuit Court of the District of Columbia for Washington County between Robert S. Bickley complainant against Thomas Peter Thomas Munroe Robert Brent Benjamin Stoddert Elias B. Caldwell William Thornton John Stickney Adam Lindsay Edward Frithy James Daugherty Francis Lowndes Samuel Blodgett Thomas McKeowin William Davidson & William Smith defendants on the fourth day of October Eighteen hundred & five a certain decree was made and adjudged by the said Court in and by which said decree it was among other things decreed and ordered that the above bound Daniel Carroll Brent be and by the said decree was appointed Trustee for making a certain sale by the said Court in and by the said decree adjudged ordered and decreed to be made according to certain terms limitations & directions contained and expressed by said decree now the condition of the above obligation is such that if the above bound Daniel Carroll
308 Brent do and shall faithfully discharge the Trusts reposed in him by the said decree or to be reposed in him by any future order of the said Court made in the premises then and in that case the above obligation to be null and void otherwise to be and remain in full force and virtue in law.

DANIEL C. BRENT. [SEAL.]
ROBERT BRENT. [SEAL.]
DAN'L BRENT. [SEAL.]

Test: WM. BRENT.

The aforegoing Bond is thus endorsed to wit:
Approved
W. CRANCH,
W. KILTY.

PHILADELPHIA, *2nd January*, 1806.

I certify that the advertisement of which a copy is hereto annexed, was inserted in the Daily Aurora, Published by William Duane, in the City of Philadelphia, Twice a week, commencing the 3rd of December 1805, and continued to the 2nd day of January 1806, inclusive, in all Ten Times.

THOMAS KEAN,
Book Keeper to William Duane.

Daniel C. Brent, Esqr., to Wm. Duane, Dr.

1805.
Decem'r 3rd. For advertising Property at public sale at the suit of Robert S. Beckley against Thos. Peter, Thomas Munroe, & others by virtue of a decree of the circuit court of the District of Columbia, 3 squares. 10 times.... $8.25

309 *Public Sale.*

Jan'y 2d, 1806.

By virtue of a decree of the Circuit Court of the District of Columbia, for the county of Washington, in the suit of Robert S. Bickley against Thomas Peter, Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithey, James Dougherty, Francis Lowndes, Samuel Blodgett, Thomas McKewen, William Davidson and William Smith, Defendants in Chancery, will be sold on Thursday the 2d day of January next ensuing at Stelle's Hotel, for the highest bidder at public auction on a credit of six and nine months by equal moieties, the purchasers giving their notes with approved endorsers negotiable in the Bank of Columbia or the Branch Bank in the City of Washington:

All that property situate in the said city as below described, or so much thereof as shall be sufficient to raise a sum to satisfy the complainant's debt and costs and the expenses attending the execution of this decree, to wit, Square numbered 195, square 277, square 334, square west of square 309 square east of square 475. Lots numbered 6, 7, 8, 9, 10, 11, 12 in square 159. Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 10, 11, 12, 13, 14, 15, 16, 17 in square 182. Lots numbered 5, 6, 7, 8, 9, 10 in square 212. Lot numbered 10 in square 84. Lots numbered 7 and 9 in square 225. Lots numbered 1, 4, 5, 7, 14, 18 in square 200. Lot numbered 21 in square 254.

310 Lots numbered 4 and 20 in square 4. Lot numbered 21 in square 16. Lot numbered 5 in square 12. Square 193.

Also squares numbered 156, 157, 180, 208, 210, 239, 241, 279, 308, 310, 336, 337, 338, 363, 365, 366, 395, 396, 397, 417, 442, 445, 476, 478, 508, 509, 519 square north of square 242 square north of square 333, square north of square 396, and square north of square 508. And also the following lots to wit. numbered 8 in square

161 lots numbered 112 13 and 14 in sq. 361. Lots numbered 1 2 3 and 10 in sq. 393, lots numbered 1 2 and 3 in sq. 416—also several certain ground rents reserved by said Blodget amounting in the whole to eighty dollars per annum, and also all that square in the City of Washington known and distinguished in the plan of the said city by sq. no. 688 except that part of the said square alleged to be sold and conveyed by the said Samuel Blodgett and Benjamin Stoddert to Adam Lindsay one of the defendants herein named—On lot No. 9 in sq. 2—, are erected the wall of two large two story houses, and on sq. No. 200, are also two houses one of wood and the other of brick. Plotts of the different squares and lots—containing the number of square feet, and showing the lots on which buildings are placed, will be exhibited on the day of sale.

The sale will commence precisely at 10 o'clock A. M., and if sufficiency of property to satisfy the debt &c. shall not be sold on that day, it will be continued to the next, and the day after if necessary.

DANIEL C. BRENT, *Trustee.*

November 28th, 1805. 2 awtfdf 808.

311 I certify that the annexed Advertisement was published in the Washington Federalist twice a week between November 30, 1805 and January 2d, 1806.

WM. A. RIND,
Georgetown, District of Columbia.

Jan. 15, 1806.
Charge of publication $9.00.

Public Sale.

By virtue of a decree of the circuit court of the District of Columbia, for the County of Washington, in the suit of Robert S. Bickley against Thos. Peter, Thomas Monroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithy, James Dougherty, Francis Lowndes, Samuel Blodget, Thomas McKerven, William Davidson and William Smith defendants in chancery, will be sold on Thursday the 2d day of January next, ensuing at Stelle's hotel, to the highest bidder at public auction on a credit of six and nine months by equal moieties, the purchasers giving their notes with approved endorsers negotiable in the Bank of Columbia, or the branch bank of the United States in the City of Washington.

All that property situate in the said city as below described or so much thereof as shall be sufficient to raise a sum to satisfy the complainants debt and costs, and the expenses attending the execution of this decree to wit—square numbered 195 square 277,
312 square 334, *square 334*, square west of square 309, square east of square 475, Lots numbered 6, 7, 8, 9, 10, 11, 12, in square 159, lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, in square 182, lots numbered 5, 6, 7, 8, 9, 10, in square

212, lot numbered 10 in square 84 lots numbered 7 and 9 in square 225, lots numbered 1, 4, 5, 7, 14, 18, in square 200 lot numbered 21 in square 254, lots numbered 4 and 20 in square 4, lot numbered 21, in square 16, lot numbered 5 in square 12 square 196 Also squares numbered 156, 157, 180, 208, 210, 239, 241, 279, 308, 310, 336, 337, 338, 363, 365, 366, 395, 396, 397, 417, 442, 445, 476, 478, 508, 509, 519, square north of square 242, square north of square 333, square north of square 396, and square north of square 508, and also the following lots, to wit, lot numbered 8 in square 161, lots numbered 1, 12, 13 and 14, in square — lots numbered 1, 2, 3 and ten in square- 393, 361, lots numbered 1, 2 and 3, in square 416. Also several certain ground rents reserved by said Blodget amounting in the whole to eighty dollars per annum. And also all that square in the said City of Washington known and distinguished in the plan of the said city, by square No. 608, except that part of the said square.

Torn off { sold to and conveyed by the said Samuel Stoddert, to Adam Lindsay, herein named. On lot No. 9 to the wall of two large two houses, and on square No. 200 are also two one of wood, and the other of brick— of the different squares and lots—containing the

313 number of square feet, and showing the lot on which buildings are placed, will be exhibited on the day of sale.

The sale will commence precisely at 10 o'clock, A. M., and if a sufficiency of property to satisfy the debt &c. shall not be sold on that day it will be continued to the next, and the day after if necessary.

DANIEL C. BRENT, *Trustee.*

Dec. 3. ttith 2j.

Order of Ratification.

Filed 25th January, 1806.

BICKLEY
vs.
BLODGET, &C.

JANUARY 25TH, 1806.

Ordered—That the Report made by Daniel Carroll Brent, the Trustee in this case of the sale made by him be absolutely ratified and confirmed unless cause to the contrary be shown on or before the 4th Monday in March next. Provided a copy of this order be inserted three successive weeks before that time in the National Intelligencer, the Washington Federalist, and the Daily Aurora, in Philadelphia.

The report states that a part of the property mentioned in the

decree was sold by him to the amount of Twenty Thousand
314 seven hundred and thirteen dollars seventy five cents the particulars of which are in the said report stated.

By Order—

WM. BRENT, *Clk.*

March 21st, 1806.

ROBERT S. BICKLEY
versus
THOMAS PETER, THOMAS MUNROE, ROBERT BRENT, BENJAMIN STODDERT, ELIAS BOUDINOT CALDWELL, WILLIAM THORNTON, JOHN STICKNEY, ADAM LINDSAY, EDWARD FRITHEY, JAMES DOUGHERTY, FRANCIS LOWNDES, SAMUEL BLODGET, THOMAS M'EWEN, WILLIAM DAVIDSON, and WILLIAM SMITH.

January 25, 1806.

Ordered that the report made by Daniel Carroll Brent the trustee in this case of the sale made by him, be absolutely ratified and confirmed unless cause to the contrary be shown on or before the 4th Monday in March next, provided a copy of this order be inserted three successive weeks before that time in the National Intelligencer, the Washington Federalist and the Daily Aurora in Philadelphia.

The report states that a part of the property mentioned in the decree was sold by him to the amount of twelve thousand
315 seven hundred and thirteen dollars, seventy five cents, the particulars of which are in the said report stated.

By order—

WM. BRENT, *Clk.*

This is to certify that the above advertisement has been inserted in the Washington Federalist Three weeks successively.

W. A. RIND.

Amount of publication $2.50.
March 21, 1906.

N. B.—The certificate of Mr. Smith Editor of the N. E. is the other side.

D. C. BRENT.

Certificate of Publication.

March 27, 1806.

WASHINGTON CITY, *January* 25, 1806.

ROBERT S. BICKLEY
vs.
THOMAS PETER, THOMAS MUNROE, ROBERT BRENT, BENJAMIN STODDERT, ELIAS BOUDINOT CALDWELL, WILLIAM THORNTON, JOHN STICKNEY, ADAM LINDSAY, EDWARD FRITHEY, JAMES DOUGHERTY, FRANCIS LOWNDES, SAMUEL BLODGETT, THOMAS M'EWIN, WILLIAM DAVIDSON, and WILLIAM SMITH.

316 Ordered, that the report made by Daniel Carroll Brent, the trustee in this case, of the sale made by him, be absolutely ratified and confirmed unless cause to the contrary be shewn on or before the 4th Monday in March next, provided a copy of this order be inserted three successive weeks before that time in the National Intelligencer, the Washington Federalist and the daily Aurora, in Philadelphia.

The report states that a part of the property mentioned in the decree was sold by him, to the amount of twenty thousand seven hundred and thirteen dollars and seventy-five cents, the particulars of which are in the said report stated.

By order.

WM. BRENT, *Clerk.*

f3w.

Feb. 14.

Daniel C. Brent, Esqr., to Wm. Duane, Dr.

1806.

Febru'y 14. For advertising, in the case of Robert S. Bickley against Thomas Peter, and others, 1/12 Sqrs. 3 times..... $1.50

Amt. paid for advertising since last report:

Duane	$1.50
Rind	2.50
Smith, approved.....	2.50
	$6.50

D. C. BRENT.

317 PHILADELPHIA, 27*th March*, 1806.

I certify that the annexed advertisement appeared, or was inserted in the Daily Aurora, printed & published by William Duane in the City of Philadelphia, once a week for three successive weeks.

THOS. KEAN,
Book-keeper for Wm. Duane.

(On inside of sheet:)
You are (words torn out) one insertion
of advg. you " was sent by
mistake, & postage..... $0.62½.

Order to Trustee to Convey Property.

Dcr. Term, 1806.

District of Columbia, Washington County. In Chancery. December Term, 1806.

ROBERT S. BICKLEY
against
THOMAS PETER, & Others.

Upon the further report of the trustee in this case, it is ordered by the Court that the said Daniel Carroll Brent, Trustee as aforesaid, Thomas Peter & Thomas Munroe in the said Bill mentioned do respectfully convey and transfer to Robert S. Bickley his heirs and assigns, agreeably to the assignment, transfer and power annexed to the said report, all the property purchased by Henry
318 Pratt and George Budd at the sale made by the said Daniel C. Brent Trustee in this case, and which, by the former decree of this Court they were respectively ordered thereby to join in conveying.

By Order—

WM. BRENT, *Clk.*

Thereupon further process of and upon the premises aforesaid between the parties aforesaid by consent of the said parties and their Solicitors aforesaid and by order of the Court here thereon was continued from term to Term until this day to wit the first Monday of June 1806. At which day to wit the said first Monday of June 1806 came again into Court here the parties aforesaid by their Solicitors aforesaid and the said above mentioned Trustee to wit Daniel Carroll Brent makes the following report to the Court here to wit "To the Hon'ble the Judges of the Circuit Court of the District of Columbia Daniel Carroll Brent the Trustee for selling the property and ground rents directed by a decree of your Court to be sold in the case of Robert S. Bickley against Thomas Peter Thomas Munroe Robert Brent Benjamin Stoddert Elias B. Caldwell William Thornton John Stickney Adam Lindsay Edward Frithy James Daugherty Francis Lowndes Samuel Blodgett Thomas McEwen William Davidson and William Smith defendants in Chancery respectfully reports. That in obedience to the decree of the said Court he did duly
319 advertise for sale in the National Intelligencer the Washington Federalist and in the daily Aurora printed in Philadelphia according to the stipulations and directions of the said decree all the property and ground rents thereby and therein directed to be sold as will fully appear by reference to the advertisements published in the several papers mentioned and which with the Certifi-

cates of their due publication therein and hereunto annexed and which advertisements and certificates it is prayed may be taken as part of this report. That he attended at Stelle's Hotel on Thursday the second day of January eighteen hundred and six the place and date of sale and did sell at public auction to the highest bidder on that day and the two following days agreeable to the directions and terms of the decree and advertisements all the property and ground rents directed to be sold except such property as will hereafter be mentioned in this report. That the sales amount to the sum of Twenty thousand seven hundred and thirteen dollars seventy five cents a particular list of the purchasers and their endorsers and of the property and ground rents sold is hereto annexed and it is prayed may be taken as part of this report. That the plaintiff Robert S. Bickley directed him as will appear by his letter dated the fourth day of January eighteen hundred & six and is hereunto annexed and it is prayed may be taken as part of this report "not to require from George Budd or Henry Pratt or either of them any notes whatsoever as the purchasers made by them were on account of himself and others" that in consequence of the directions
320 from the said Bickley he did not require any notes whatsoever from the said George Budd or Henry Pratt or either of them, that the notes of the other purchasers are duly taken and ready for the direction of the Court. That he did not offer for sale as directed by the decree square west of square number three hundred and nine because he cannot find, and he has made every enquiry of the Surveyor and Collector of the City any such square on the plan of the City it is presumed that the square intended to be sold is square north of square three hundred and nine. That he did not offer for sale as directed by the decree square north of square numbered three hundred and thirty three because he believes that there is no such square distinguished on the plan of the City and that the square numbered three hundred and thirty two which occupies the place on the plan as he is informed by Mr. King the Surveyor was in the division made between Samuel Blodgett and the commissioners of the City of Washington assigned to the public and subject to be sold by them under the deed of Trust. That when lot No. twenty one in square numbered two hundred and fifty four was put up to sale Mr. Phineas Bradley stated that the commissioners of the City of Washington had granted deed to a certain Robert Brown for that lot and that he the said Robert Brown has conveyed the same, to him the said Phineas Bradley it was then with the express consent and understanding of the said Robert S. Bickley the plaintiff stated by the Trustee that if there was no title no money would be required and that the Court would decide
321 the title the said Phineas Bradley became the purchaser of the said lot and has given his notes with two endorsers for the amount. That the situation of this lot appears to be as follows—that Samuel Blodgett purchased of the commissioners of the City on the eighth day of October seventeen hundred & ninety two that on the twenty sixth day of August seventeen hundred and ninety-nine he gave an order to the commissioners to make a deed to the said Robert Brown for said lot that the commissioners of the City did on the third day of January eighteen hundred make a

deed to said Brown—that the deeds of Trust of the said Blodgett to secure the payments on lottery number one it is believed is dated the twenty eighth day of January seventeen hundred and ninety-four—that when the easter-most house or lot*t* number nine in square two hundred and twenty-five was put up for sale it was stated that the portion of the lot annexed to the east house was to be of the same width as was covered by the rear of the house on its ground or basement story that it was to extend from the east line of the lot to the centre of the party wall in the rear and to be continued in width southwardly parallel from the said east line to the south or lower end of the lot*t*. That the Trustee discovered that eleven feet of the wall of one of the houses mentioned in his advertisement to be on lot number nine in square number two hundred and twenty five to wit of the westerly house was on lot number eight in the same square that when he put up to sale the said westerly house and the balance of the said lot he expressly mentioned this circumstance and stated that he only offered for sale that part of the said
322 house which stood on lot number nine that it was also mentioned what portion of the said lot had been sold with the easter-most house. That it appears that taxes to a considerable amount has been paid on this property—that on the fourth day of February Eighteen hundred & five Robert S. Bickley paid taxes to the amount of one hundred and eighty four Dollars and thirty five cents that part of the same the amount is not now known by the Trustee was paid for property other than that included in the decree to be sold That the said Trustee for and on the part of the said Robert Bickley has paid to the Collector of the said City the taxes for the years 1802 1803 1804 and 1805 on the property decreed to be sold to the amount of five hundred and thirty-six dollars and twenty seven cents—That there appears to be due on the property directed to be sold a considerable sum for the direct tax—amount the Trustee does not know all which is respectfully and truly reported.

DAN'L C. BRENT, *Trustee.*

Jan. 21, 1806.

January 24th, 1806.—Daniel C. Brent appeared before me and made oath on the holy Evangels of Almighty God to the truth of the within report.

W. KILTY.

323 In Chancery. June Term, 1806.

(June 25th.)

ROBERT S. BICKLEY
vs.
BLODGETT & Others.

This Court having heretofore to wit on the 25th day of January 1806 ordered that the report made by Daniel Carroll Brent the

Trustee in this case appointed of the sale made by him be absolutely ratified & confirmed unless cause to the contrary should be shown on or before the 4th Monday in March then next but now past and it appearing to the satisfaction of the Court that the said order was duly published and no cause to the contrary being shown except as to lot No. 21 in square No. 254. The report of the said Trustee (except as to the sale of the said lot) is hereby approved and the sales therein mentioned (except that of the said lot) are hereby absolutely ratified and confirmed and as to the said lot No. 21 in the square No. 254 reported by the said Trustee to have been by him sold to one Phineas Bradley who alleges as appears by the said report that he was legally seized in fee thereof at the time of the former decree of this Court by a legal conveyance from the commissioners appointed under the act of Congress for establishing the temporary and permanent seat of the Government of the United States and who by his petition to this Court has set forth that he became the purchaser thereof for a valuable consideration without notice of any incumbrance or claim by any of the parties to this suit it is
324 ordered that this cause be retained for the further order and decree of this Court therein and it is further ordered and decreed by the Court that out of the monies received or to be received by the said Trustee on the other sales in his report mentioned the said Trustee retain in his hands the amount of expenses of the said sales and advertisements amounting according to his said report to sixty Dollars and ninety seven cents and the amount of taxes by him paid being 536 Dollars and 27 cents and the further sum of five hundred and fifty dollars for his commissions and in full compensation for his services in performing the duties of his trust in this cause and that he pay over to the complainant in this suit or to his order all the residue of the money arising from the said sales as soon as collected to be applied towards the discharge of the sum or sums of money heretofore decreed by this Court in this suit to be due from the defendant Samuel Blodgett to the complainant.

By order

WM. BRENT, *Clk.*

Assignment.

Filed January 20th, 1807.

Whereas in a cause depending in the Circuit Court of the District of Columbia held for Washington County as a Court of Chancery between Robert S. Bickley Complainant against Thomas
325 Peter, Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithey, James Daugherty, Francis Lowndes, Samuel Blodget, Thomas McEwin, William Davidson and William Smith, defendants, it was on the fourth day of October eighteen hundred and five, decreed, ordered and adjudged by the authority of the said court that sundry squares, lots and portions of ground and ground rents in the City of Washington be sold for the purposes

particularly mentioned in the said Decree, and it was also decreed by the authority aforesaid that Daniel Carroll Brent be and he thereby was appointed Trustee for making said sale. And the said Daniel Carroll Brent having complied with all previous directions of the said decree did at Stelles Hotel in the City of Washington expose to public sale on the second third and fourth days of January eighteen hundred and six the property mentioned in the said Decree when Henry Pratt and George Budd of the City of Philadelphia being the highest Bidders for certain property particular- mentioned in the said Trustees report entered on the records of the said Court at and for the sums mentioned in the said report and whereas the property so purchased by the said Henry Pratt and George Budd was purchased for the use and benefit of the said Robert S. Bickley, and the said Henry Pratt and George Budd being desirous that a conveyance should be made for the whole of the property so purchased by them as aforesaid to the said Robert S. Bickley and his heirs.

Now know all men by these presents that we the said Henry Pratt and George Budd in consideration of the premises and for
326 and in consideration of the sum of one dollar to each of us in hand paid by the said Robert S. Bickley, have and each of us hath assigned, transferred and set over and by those presents Doth assign, transfer, and set over to the said Robert S. Bickley and his heirs all property purchased by us and each of us at the sale aforesaid and which is entered in our and each of our names on the report of the said Trustee aforesaid, and we do hereby authorize and empower the said Daniel Carroll Brent as Trustee aforesaid to convey the same to the said Robert S. Bickley and his heirs in like manner as by Law the same ought to be conveyed to us and each of us, and do also authorize and request the said Thomas Peter and Thomas Munroe Superintendent of the City of Washington to join in and become parties to such conveyances in the same manner as they are directed by the said decree and in the same manner as if the said Robert S. Bickley had been the purchaser at said sale and been returned as such by the said Trustee.

In Testimony whereof we have hereunto subscribed our names and affixed our seals, in the City of Philadelphia this Thirty-first day of October in the year One thousand eight hundred and six.

HENRY PRATT. [SEAL.]
GEORGE BUDD. [SEAL.]

Sealed and delivered in the presence of us—
JOHN B. ORSO,
JA. WHITEHEAD,
JOSEPH CLAY.

I, Clement Biddle Notary Public for the Commonwealth
327 of Pennsylvania duly commissioned and qualified residing in the City of Philadelphia do hereby certify that on this day the first of November in the year one thousand eight hundred and six before me personally came Harry Pratt and George Budd and acknowledged the above assignment & power of attorney to be their

and each of their acts and deed & that John B. Orso, James Whitehead and Joseph Clay subscribed their names as witnesses to the execution thereof.

All which I attest as above the day & year above written.

[SEAL.] CLEMENT BIDDLE,
Notary Pub., 1806.

On this third day of November in the year one thousand eight hundred and six before me Robert Wharton Esquire Mayor of the City of Philadelphia personally came James Whitehead one of the subscribing witnesses to the Execution of the within Instrument and being duly sworn on his Solemn Oath deposes & says that he was present and did see Henry Pratt and George Budd sign, seal and as their act and deed deliver the within Assignment and Letter of Attorney for the purposes therein mentioned and that he the deponent together with John B. Orso and Josept Clay subscribed their names as witnesses to the Execution thereof.

J. A. WHITEHEAD.

In Testimony whereof I have hereunto set my hand and caused the seal of the Mayoralty of said City to be hereto
[SEAL.] 328 affixed the — day & year above written & I do hereby certify that Clement Biddle before whom the above mentioned acknowledgment was taken & who has signed his name & affixed his seal of Office thereto is a notary public for the Commonwealth of Pennsylvania duly commissioned & authorized to receive proof & acknowledgment of Letters of Attorney &c. to whose signature & Certificate as such full faith & Credit are due & ought to be given.

ROBERT WHARTON, *Mayor.*

DISTRICT OF COLUMBIA, *To wit:*

Be it remembered that on the second day of January 1807 personally appeared Joseph Clay and made oath on the holy evangels of Almighty God that he was present and did see Henry Pratt and George Budd of the City of Philadelphia sign and seal and as their act and deed deliver the annexed power of attorney for the uses and purposes therein expressed and set forth, and that at the time of the execution thereof he this deponent and John B. Orso and James Whitehead did set and subscribe their hands as witnesses thereto—in manner as thereby appears—

Sworn before

ROB'T ALEXANDER.

DISTRICT OF COLUMBIA, *To wit:*

Be it remembered that on this thirteenth day of January 1807 personally appeared before me Chief Judge of the Circuit Court of the District of Columbia Joseph Clay and made oath on the Holy evangels of almightly God that he was present and did see
329 Henry Pratt and George Budd of the City of Philadelphia sign and seal and as their act and deed deliver the annexed

power of attorney for the uses and purposes therein expressed and set forth and that at the time of the execution thereof he this deponent and John B. Orso and James Whitehead did set and subscribe their names as witnesses thereto in manner as thereby appears.

Sworn to before

W. CRANCH.

(Endorsed:) Filed January 20th, 1807, to be Recorded & the same day was recorded in Liber 2 No. 11 folios 178-179 & 180 one of the Land Records of Washington County in the District of Columbia, & examined By Wm. Brent, Cl'k.

Filed Jan'y, 1807.

Daniel C. Brent, Trustee, in the case in Chancery, Between Robert S. Bickley Complainant against Thomas Peter, Thomas Munroe, Robert Brent, Benjamin Stoddert, Elias B. Caldwell, William Thornton, John Stickney, Adam Lindsay, Edward Frithey, James Daugherty, Francis Lowndes, Samuel Blodget, Thomas McEwen, William Davidson, & William Smith Defendants begs leave to report, that the property mentioned in his former report, in this case, to have been purchased by Henry Pratt and George Budd, was purchased by them for the use & benefit of the said Robert S. Bickley, as will fully appear by reference being had to the power of attorney given by the said Henry Pratt and George Budd, to said
330 Daniel C. Brent, Trustee, Thomas Peter, & Thomas Munroe Superintendent of the City of Washington, requesting and authorizing the said Brent, Peter and Munroe to convey and transfer the said property to the said Robert S. Bickley, and the said Brent is advised that it will be correct & proper that your Hon'ble Court direct him the said Brent, Thomas Peter & Thomas to make deeds for the said property to the said Robt. S. Bickley—all which is respectfully submitted.

DANIEL C. BRENT, *Trustee.*

January 14, 1807.

To the Hon'ble the Judges of the Circuit Court of the Dist. of Columbia.

May 4th, 1807.

Circuit Court, District of Columbia, Washington County.

May 4, 1807.

ROBERT S. BICKLEY
vs.
SAMUEL BLODGET, JR., & Others.

Pl't'ffs Costs up to This Day.

Costs at December Term 1802 is.....	$28	&	201	Tot	
" at July Term 1803 is.....	.....		20		
" at Dec. Term 1803.....	.....		44		
" at July Term 1804.....	.....		2332		
at December Term 1804.....	.....		20		
331 at July Term 1805	.....		340		
at Dec'mr Term 1805.....	.....		140		
at July Term 1806.....	.....		548		
at Dec. Term —	$0.63		3655		
ad.....	/3		1218	(torn out)	
	$28.63	&	4873 1/3	Tot	

At June Term 1806 the Trustee was allowed for his Commission &c.....	$550.00
Also for advertising &c	60.97
Also for Taxes paid by Trustee.....	536.27
	$1147.24

Copy of Recording deed from Trustee to Robert S. Bickley charged to Trustee, $4.00.

Test: WM. BRENT, *Cl'k.*

To the Hon'ble the Judges of the Circuit Court of the District of Columbia.

GEN: I was formerly appointed Trustee in the case of Robert S. Bickley *vs.* Thomas Peter & others—in compliance with the order of the decree. I proceeded to sell the property therein mentioned, part of the property directed to be sold was claimed by Phineas Bradley, it was nevertheless sold, & was purchased by him & for which he gave two notes payable to Abraham Bradley, endorsed by him & Robert F. How, for two hundred & two Dollars fifty
332 cents east—Upon my report to the Court of the sales, & a statement of the claim of said Bradley, they directed that I

should not collect the money, until their further orders, whereupon as the said notes become due, I called upon the said endorsers & took their letters directed to me, declaring that if I would not, take measures to collect, or have the said notes protested that their responsibility, should nevertheless continue—the notes & letters are herewith enclosed—having nearly finished all the other business of the said trust & also having removed out of the District of Columbia, & the Court not having made any final order as to the said notes, I have to pray them, to make some order respecting the notes & letters either appointing another Trustee to receive them, or directing me to lodge them in the Clerk's Office—as Rob't F. How is the last endorser it may perhaps be well for the Court to give some directions on this point—I do not conceive it proper for me to endorse, as whoever may be directed to collect can endorse.

With great respect I am &c.

June 29th, 1809. DANIEL C. BRENT.

June Term, 1809.

Upon the petition of the trustee filed in this cause at this term, it is ordered by the Court that the notes and letters in the said petition mentioned, be filed with the Clerk of this Court until further order—the said Clerk giveing the said trustee a receipt for the same.

By order

WM. BRENT, *Clk.*

The trustee filed the notes & letters mentioned within 29th June 1809.

333

Supplemental Bill.

Filed 28th May, 1810.

To the Honorable the Judges of the Circuit Court of the District of Columbia for the County of Washington now sitting in said County as a Court of Chancery:

The petition of Robert S. Bickley sheweth that he has a suit now pending in this Honorable Court wherein he is complainant and Samuel Blodget and others are defendants to which suit he refers, and prays that the same with all the proceedings had therein may be taken as a part of this his petition. That in that case this Court heretofore to wit at July Term Eighteen hundred and five decreed that the sum of twenty six thousand six hundred and thirty five dollars and thirteen cents current money of the United States together with Interest and costs was due and owing from the said defendant Blodget to your Petitioner, and awarded that the said Samuel Blodget should pay the same to your petitioner on or before the twenty second day of November in the year Eighteen hundred and five, and in default of his so doing that Daniel Carroll Brent a Trustee by this Court appointed should sell certain property in the

said decree mentioned to raise the said sum of money, all which will fully appear reference being had to the said decree. Your Petitioner further sheweth that the said Trustee, hath sold the said property, and that the same falls greatly short of paying the sum so
334 decreed to be due to your petitioner, as will appear by the Report of the proceedings of the said Trustee to this Court returned. Your petitioner further sheweth unto your Honors that he hath lately discovered sundry other property not included in his former Bill and consequently not included in any former decree of this Court whereof the said Samuel Blodget was seized and to which he was entitled on or before the twenty eighth day of January in the year seventeen hundred and ninety-four when he executed the deed in the Bill of Complaint of your now petitioner mentioned and set forth to Thomas Johnson, Junior and Thomas Peter in trust to secure the payment of the prizes in Lottery No. 1 and whereof the said Blodget is now seized and possessed which said property is as follows to wit. sundry squares and parts of square in the said City of Washington known and distinguished on the plan of the said City as follows to wit Square West of Square No. 157 Square North of Square No. 278, Square North of Square No. 309 Square South of Square No. 395 and also parts of the following Squares in the said City to wit the North half of Square No. 178, the South half of Square No. 192, the East half of Square No. 207, the South half of Square No. 306 the East half of Square No. 339, the South half of Square No. 398 the West half of Square No. 422, and smaller parts of the following Squares to wit, Square No. 183, Square No. 238, Square No. 275, Square No. 280, Square No. 313, Square No. 446, Square No. 510, and Square No. 521. That the said Samuel Blodget was also on the said twenty eighth day of January in the year seventeen hundred and ninety four seized and possessed of and en-
335 titled to sundry Lots in the said City which he afterwards let on ground rent, reserving an annual rent for the said property, to divers persons hereinafter particularly set forth, which Tenants your petitioner does not wish to disturb or interfere with but wishes to leave them in the quiet enjoyment of their leases under the said Blodget under the Terms and conditions expressed in the said Leases respectively, but wishes and prays of this Court to direct the ground rents reserved thereon, and the reversionary Interests of the said Blodget therein whatsoever the same may be, to be sold for the benefit of your petitioner, which lots so leased on ground rent are as follows to wit, eleven feet eleven inches more or less fronting on F Street, North, extending in depth one hundred and fifty nine feet to an alley being part of Lot No. 20 in Square No. 254 leased to a certain Edward Fennell his Executor &c. for a Term of years renewable from time to time forever, reserving the quarterly rent of twenty-four dollars payable to the said Blodget—part of Square No. 225 fronting on the President's Square, and West 15 Street twenty five feet, and running back, the whole depth of the said Lot as laid off by the said Blodget it being the same occupied by Thomas Herty, and on part of which he built a framed dwelling House Leased by the said Blodget

to Alexander McDonald at the reserved annual rent of Fifty Dollars. And also part of the said Square No. 225 bounded for such part as follows Beginning at the distance of fifty one feet two inches
336 from the South West corner of the said Square, and running thence with the line of Pennsylvania Avenue Easterly twenty seven feet then at right angles with the said Avenue Eighty five feet, thence at right angles with the last mentioned line twenty seven feet, and thence by a straight line to the place of beginning, leased by the said Blodget to one Thomas Carpenter his Executor &c. for a term of years renewable forever under the reserved annual rent of Fifty four dollars, to all of which ground rents the said Blodget now claims title and is in the actual receipt thereof, that on the said twenty eighth day of January in the year seventeen hundred and ninety four the said Blodget was and still is seized and possessed of part of a Tract of land called "The Jamaica Farm" the rest of the said Tract having been laid off as and for a part of the said City of Washington, which part — not included in the lines of the said City, and now held and claimed by the said Blodget is supposed to contain in quantity about forty acres, be the same more or less and lies adjoining to the said City and on the north side thereof—your Petitioner also states that said Samuel Blodget was also seized of and entitled to Square South of Square No. 195 and Square North of Square No. 196 on or before the said twenty eighth day of January in the year Seventeen hundred & ninety-four, that he hath since sold & conveyed the same to Samuel Smith Esq. of Baltimore in the State of Maryland and who your petitioner prays may be made a party to the Original
337 Bill & to this his Bill of Complaint with apt words to charge him &c. and as he resides out of the District of Columbia to direct such reasonable notice to be given of the substance of the same as to y-r Honors may seem meet.

The premises considered your petitioner prays that the whole of the said property hereinbefore mentioned may by a decree of this Honorable Court be sold to raise the balance still unprovided for which by this Honorable Court was heretofore decreed to be due to him, and that process may issue directed to the said Samuel Blodget and Samuel Smith commanding them to appear before this Court and answer this petition and supplemental Bill full and particularly upon their Corporal Oath &c. and your Petitioner as in duty bound will pray &c.

JAMES S. MORSELL.
Sol. for Pet.

Answer of Sam. Blodgett.

Filed 30th October, 1811.

ROBERT S. BICKLEY
vs.
SAMUEL BLODGET ET AL.

Supp'l Bill.

This Defendant in answering says that the facts are true as stated in the said supplemental Bill filed in this cause, except as to
338 square Numbered twenty five, in and to which he alleges he never had any interest except as Trustee for William Blodget, in consequence of a conveyance from Benjamin Blodget and Peter Gilman, and this defend- has no objection to a decree as prayed as to all the other property in said Bill mentioned.

SAM. BLODGET.

DISTRICT OF COLUMBIA,
County of Washington, To wit:

On the thirtieth day of October, 1811 Samuel Blodget appeared in Open Court and made oath that the facts as above stated are true as stated.

Sworn in open Court,

WM. BRENT, *C.*

Decree.

In Chan. In the Circuit Court of the District of Columbia for the County of Washington.

ROBERT S. BICKLEY
against
SAMUEL BLODGET ET AL.

Supp'l Bill.

This cause being submitted as to Sam'l Blodget one of the defendants upon the Bill answer and exhibits. It is adjudged ordered this fifth day of November in the year eighteen hundred and thirteen by consent of said Blodget and the said complainant and by
339 the authority of this Court That all and singular the property mentioned in the supplemental Bill filed in this cause be sold, except Square numbered Twenty five and that Washington Boyd be and he is hereby appointed Trustee to make and effect said sale, the course of his proceedings shall be as follows. He shall first file with the Register of this Court a bond with one sufficient Surety to be approved of by one of the Judges of this Court in the penal

sum of Twenty thousand dollars current money conditioned for the faithful performance of the Trusts reposed in him by this decree or to be reposed in him by any future order or decree in this case. He shall then give six weeks public notice by advertisement in some newspaper printed in the City of Washington of the time place and terms of sale at which time and place he shall then set up to public sale all and singular the said real property mentioned in the said Supplemental Bill except as aforesaid, and the same to sell to the highest bidder at such sale upon a credit of six, nine & twelve months equal pay'ts the purchaser or purchasers at such sale giving Bond with security to be approved of by said Trustee for the amount of the purchase money with Interest thereon from said day of sale payable as aforesaid, and upon the payment of the purchase money and on the ratification of the sale by this Court, and not before, the said Trustee shall by a deed or deeds duly executed according to law bargain & sell to said purchaser or purchasers all the Interest claim and right of said Blodget of in and to said property to said
340 purchaser or purchasers in fee simple—and the said Trustee shall make out a full report upin oath to this Court of all and singular his proceedings under this Decree and he shall be allowed such commission or compensation for his trouble in the execution of the said trust as it shall appear to this Court is right & proper. And the said Trustee shall bring into this Court the money by him to be received on account of the said sale to be disposed of according to the future order of this Court in the premises.

By order

WM. BRENT, *Clk.*

Application of Washington Boyd.

Filed 26th June, 1818.

To the Hon. the Judges of the Circuit Court of the District of Columbia sitting for the County of Washington:

The subscriber respectfully represents, that he was on the fifth day of November 1813 appointed the trustee to sell certain real property of Samuel Blodgett in the City of Washington, contained in a supplemental Bill filed in the cause of Robert Bickley against said Samuel Blodgett & others. That in pursuance of the Decree of this Court appointing him Trustee as aforesaid, he proceeded to make sale of said property, and did on or about the 20th January 1817 make report to this Court of his proceedings under the said Decree—which proceedings have been fully approved and ratified by this
341 Court. That to complete the Trust it will be necessary to make Deeds to the several purchasers under the said Decree, who have paid, or shall pay the amount of the purchase money—and as the subscriber will in consequence of bad health be necessitated to leave the District for some time, he respectfully solicits the Hon. Court to appoint some other person to make the conveyances of the property sold as aforesaid, & as Major John Davidson of this

City is appointed by Mr. Bickley the complainant for whose use the property was sold, his agent and attorney in fact here, the subscriber would most respectfully mention the name of the said Major John Davidson for the purpose aforesaid, who has intimated his willingness to take upon himself that duty.

WASHINGTON BOYD.

June 25th, 1818.

The Court having considered the above application of Washington Boyd, order and decree, this 26th day of June 1818 that John Davidson be, and he is hereby appointed Trustee for making the Deeds to the several purchasers at the sale of the real property of Samuel Blodget, made by the said Boyd, the Trustee appointed by the former order and decree of this Court in the case of Rob't S. Bickley against Samuel Blodget & others.

By order

WM. BRENT, *Clk.*

342

Mason. Oct. 9th. Robert S. Bickley. Morsell.

10.

Recorded in Chancery Record No. 1, folios 399, &c., being only the original [proceedings]* suit.

Copy ch'd.

Caldwell. App. to sup. bill for Blodget.

Key.

Kearney. Samuel Blodgett & others.

Supplemental bill. Subpa.

1810, May 29. Suppl. bill. Subpa. *vs.* Sam'l Blodgett & Sam. Smith.

Sum. Blodgett, *n. est.* Smith.

1810, June. Rule argued; cont'd.

Attach. for not answering iss'd. Decr.

1811, June. Blodgett answer. Decr.

1812, June. Decr.

1813, June. Decree. Decr.

1814, June. Decr.

1815, June. Trustee's bond. Decr.

1816, June. Decr. Trustee's report ord. of ratification.

1818, June. Final order of ratification.

[* Word in brackets erased in copy.]

343

Order of Court.

Filed 18th January, 1820.

Dec. Term, 1819.

BICKLEY & ALS.
vs.
BLODGET.

Ordered by the Court that Washington Boyd the trustee appointed in this case repay to Thos. Wannall the sum of thirty one dollars and fifty cents being the amount of the consideration money paid by said Wannall for the purchase of Lot No. 309, said Lot of ground being sold under a mistake.

Circuit Court, District of Columbia, December Term.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 137, both inclusive, to be true and correct copies of originals in cause No. 26, In Chancery, wherein Robert S. Bickley is Complain-
344 ant, and Thomas Peter, *et als.* are Defendants, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of June, A. D. 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

345

EXHIBIT No. A 13.

Filed September 10, 1908.

Application for Appointment of Guardian, &c.

Filed June 22, '65.

No. —. In Equity.

FRANCES M. DOWLING
vs.
MARY G. DOWLING.

The Petition of Richard Reeder respectfully represents, that he is related by marriage to the said parties and was appointed by the Orphans' Court of the County of Washington D. C. their Guardian.

That the complainant is of age and the defendant is an infant under age, and he therefore asks that a Guardian *ad litem* may be appointed for her, who shall in her name make answer to the said Bill of Complaint.

And he begs leave to state, that in his opinion it will be for the interest and advantage of the said parties to have the said property sold, as prayed for in complainant's bill of complaint.

RICHARD REEDER.

346 *Order Appointing Guardian Ad Litem.*

June 22, 1865.

No. —. In Equity.

DOWLING
vs.
DOWLING.

On motion of complainant's counsel, and on application of Richard Reeder, filed in said cause, and asking that a Guardian *ad litem* may be appointed for the infant defendant in the above cause, the Court hereby orders that William H. Ward be and he is hereby appointed Guardian *ad litem*, for the said Mary G. Dowling, infant as aforesaid.

By order of the Court:

Answer of Guardian Ad Litem.

Filed June 22, '65.

No. —. In Equity.

DOWLING
vs.
DOWLING.

To the Hon. the Judges of the Supreme Court of the District of Columbia sitting in Equity:

347 The answer of Mary G. Dowling to the Bill of Complaint of Frances M. Dowling against her in Chancery exhibited.

This defendant by her Guardian William H. Ward says she is an infant under the age of twenty one years and can neither admit nor deny the allegations contained in the said bill but leaves her interests in the hands of the Court.

WM. H. WARD. [SEAL.]
Guardian ad Litem.

First Order of Reference to Auditor.

June 22, '65.

No. —. Equity.

DOWLING
vs.
DOWLING.

This cause coming on to be heard on the Bill and answer, and being set for hearing by consent of counsel it is on motion of complainant's counsel this 21st day of June 1865, ordered by me at Chambers that the above cause be referred to the Auditor with instructions to ascertain and report to this Court whether or not it will be for the interest and advantage of the said infant defendant, as also, of the said complainant, that the premises mentioned in the said Bill of Complaint, should be sold, that, if he should think it advantageous he shall state the reasons of his opinion—that he may examine such witnesses as the parties may bring before him, &
348 return such testimony to this Court, and give such notice as he may deem reasonable to the said complainant & the said Guardian *ad litem*, of the time and place of this audit.

ANDREW WYLIE.

Auditor's Report on Sale, &c.

Filed June 29, 1865. R. J. M., Cl'k.

No. 455. Equity.

FRANCES M. DOWLING
ag't
MARY G. DOWLING.

Take notice that on the 27th June 1865 at my office in the City Hall, at 11 o'clock in the forenoon, I shall enquire and report whether the part of lot 20 sq. 254 can be divided, or whether it is to the advantage of the parties to have the same sold. Please attend with your witnesses, 22nd June 1865.

W. REDIN, *Aud'r.*

To Jno. F. Ennis, Esq., for Compl't; Wm. H. Ward, Esq., Guardian *ad litem* for Def't.

Service admitted.
JOHN F. ENNIS,
Sol'r for Compl't.
WM. H. WARD,
Guardian, &c.
R. H. LASKEY,
For Defendant.

349 No. 455. Equity.

DOWLING
ag't
DOWLING.

I gave the annexed notice of the enquiry directed by the order of the 22d June instant—whether the part of lot No. 20 in square No. 254 was susceptible of partition, or whether it would be to the advantage of the two coparceners to have the same sold;—and Richard Reeder was produced as a witness by Mr. Ennis on the part of the adult parcener, whose deposition is returned.

I refer to the deposition as proving the facts and averments of the bill—viz.—that the adult complainant and minor defendant are owners in common of this parcel of ground, which is unimproved, except by a tenant's temporary erection, and having a front of but twenty feet; that no useful partition can be made thereof; that the parties are unable to improve it; that it yields but little income; and that it will, for the reasons stated in the deposition, be for the advantage of both minor and adult to have the same sold, and the proceeds divided between them.

It is the only parcel of real estate owned by the two heirs, and not being susceptible of specific partition between them, it is within the rule established by the late Circuit Court in Bing's case, that, where it is all they own and it cannot be profitably divided, it is the
350 right of the adult co-parcener, under the act of '85, by analogy to the act of '86, to have a sale against the minor parcener, irrespective of the element of advantage to them; but, independent of the question of right, the present case is brought directly within the terms of the act of '85, it being shown by the proof, that a sale would be for the advantage of both parties; and thus that it is a proper case for the exercise of the discretion reposed in the Court by the act to direct a sale where such is shown to be the fact.

The lot is not of less value than $5000.

W. REDIN, *Aud'r.*

28" June 1865.

Richard Reeder being sworn saith: I knew the late William Dowling of this City; and that he owned the part of lot No. 26 in square No. 254 mentioned in the Bill; which on his death passed to his son Wm. Dowling who was married to my sister. Both the Dowlings are dead, and also my sister, the wife of the younger Dowling. By her he had two children, viz: Frances M. and Mary G. Dowling, both now living and having their residence in Baltimore; the first named is of age, being in her 23d year; the other is still a minor, between 19 and 20. Both unmarried, and have no other property except this lot, which they inherited on the death of their father under the will of their said grandfather. They are in needy circumstances, and have no means to improve this
351 lot. I was their Guardian, and about three or four years ago paid them about 7 or 800$ upon which they since lived.

I now aid the elder of the two. The lot is unimproved, except a very temporary building of one room, one story only, put up by a tenant to whom I rented the lot for three years at $75 a year, the term expiring the 1st of Feb'y next. The rent does not much more than pay taxes and expenses. The taxes for the present as well as ensuing years will be quite heavy owing to the pavement of the Street on which it fronts; which taxes said compl't and Defendant will have no means of meeting except by a sale of the lot. It would be impossible to divide it between the two parties for any useful or profitable purpose; and it will be greatly to their advantage and benefit to have the same sold. It would now sell for a good price: I think not less than a dollar & a half or a dollar & seventy cents per foot. Both the parties have expressed to me their desire to have the lot sold and the proceeds divided between them.

RICHARD REEDER.

Sworn to 27th June 1865.

W. REDIN, *Auditor.*

352 *Agreement of Solicitors to Decree.*

Filed July 5, 1865. R. J. M., Cl'k.

455. Equity.

DOWLING
vs.
DOWLING.

We have read the report of the Auditor, made & filed in the above cause on the 29th day of June 1865, and are willing that a decree for the sale of the said real estate should be passed as recommended by the Auditor.

JOHN F. ENNIS,
Sol'r for Compl't.
R. H. LASKEY,
Sol'r for Respondent.

Bond of Trustee.

Filed July 6, 1865. R. J. M., Cl'k.

455. Equity.

DOWLING
vs.
DOWLING.

Know all men by these presents: that we John F. Ennis, Gregory Ennis & William H. Ward, all of the City of Washington, in the District of Columbia are held and firmly bound to the United States

of America, in the full and just sum of Six Thousand dol-
353 lars, current money to be paid to the said United States, their lawful attorney, or Assigns, to which payment, well and truly to be made, we bind ourselves, our and each of our heirs executors and administrators, jointly and severally firmly by these presents.

Signed and sealed this Sixth day of July 1865.

Whereas the above bounden John F. Ennis, hath been appointed by a Decree of the Supreme Court of the District of Columbia, sitting in Equity, dated the Fifth day of July 1865, and passed in the above cause, Trustee to sell certain real estate in the said District, in the said proceedings mentioned. Now the Condition of the above obligation is such, that if the above bounden John F. Ennis shall & will well and truly perform the trusts reposed in him by the said decree, or which may be reposed in him by any future order or decree in the premises then this obligation to be void, otherwise to remain in full force & effect.

JOHN F. ENNIS. [SEAL.]
GREGORY ENNIS. [SEAL.]
WM. H. WARD. [SEAL.]

Witness:
F. W. JONES.

The foregoing Bond is hereby approved.
By order of the Court.
I certify that this Bond is sufficient.

G. W. PHILLIPS,
U. S. Dept. Marshal, D. C.

354 *Account of Sales.*

Filed July 25, 1865. R. J. M., Cl'k.

WASHINGTON, D. C., *July 25th,* 1865.

Account of Sales by Green & Williams, Auctioneers.

For Mr. John F. Ennis, Trustee.

By Virtue of a Decree of the Supreme Court of the District of Columbia sitting in equity and passed in a cause in said court between Francis M. Dowling Complainant and Mary G. Dowling defendant the western part of Lot numbered Twenty (20) in square numbered two Hundred and fifty four (254) was advertised on the seventh day of July 1865 to be sold on the Twenty fourth day of same month at which time the above named property was bough by B. F. Isherwood Esqr. at $2 per foot containing Three thousand one Hundred and seventy three feet four and one half inches (3173 feet 4½ inches) amounting to.....3)$6346.75

2115.37

Terms of sale as prescribed by the Decree One third Cash the balance in six and twelve months the deferred payments to bear interest from day of sale to be secured by the notes of the purchaser with good and sufficient surety to be approved by the Trustee or the purchaser can pay the whole of the purchase money If the terms are not complied with in five days after sale the Trustee reserves the right to resell at the risk and expence of the first purchaser. All conveyancing and revenue stamps at the cost of the purchaser.

GREEN & WILLIAMS,
Per H. BURR, *Clerk.*

355 *Trustee's Report.*

Filed July 25, 1865. R. J. M., Cl'k.

Advertisement.

By Green & Williams, Auctioneers.

Chancery Sale of a Valuable Building Lot on F Street North, Between Thirteenth and Fourteenth Streets.

By virtue of a Decree of the Supreme Court of the District of Columbia, sitting in equity and passed in a cause in said Court, between Francis M. Dowling, complainant, and Mary G. Dowling, defendant, I shall proceed to sell, on the premises, on Monday, the 24th instant, at 6 o'clock P. M., all that lot of ground known as the western part of Lot numbered twenty (20), in Square numbered two hundred and fifty-four (254), having a front of nineteen (19), feet eleven and a half (11½) inches on F street north, and running back with that width one hundred and fifty-nine (159) feet to an alley thirty feet wide.

Terms of sale as prescribed by the decree: One-third cash the balance in six and twelve months; the deferred payments to bear interest from the day of sale, to be secured by the notes of the purchaser, with good and sufficient surety, to be approved by the trustee, or if the purchaser prefers, the whole of the purchase money can be paid in cash.

If the terms of sale be not complied with within five days
356 from the day of sale, the trustee reserves the right to resell the said property at the risk and cost of the first purchaser.

All conveyancing and revenue stamps at the cost of the purchaser.

JOHN F. ENNIS, *Trustee.*
GREEN AND WILLIAMS, *Auctioneers.*

OFFICE OF THE NATIONAL INTELLIGENCER,
WASHINGTON, *July* 25, 1865.

We hereby certify that the advertisement of which the annexed is a copy, was published in the National Intelligencer every day till July 24, 1865, commencing on the 7th day of July, 1865.

EDW. P. FLETCHER,
For the Proprietors.

(Same Advertisement.)

WASHINGTON, *July 20th*, 1865.

Mess. Green & Williams to Daily Constitutional Union, Dr.

To Advertising "Valuable Building Lots on F St. north, between 13th & 14th Sts. John F. Ennis, Trustee 7 square, 6 times, from July 17th, 1865..... $12.25

Received payment for the Proprietors:

357 WASHINGTON, D. C., *July 24th*, 1865.

Mr. John F. Ennis, Trustee, to Green & Williams, Dr.

July 7th, 1865.	To Advert. Dowling property in Intell.....		$31.68
" 17, "	To " " " " Cont. Union.		12.25
July 24, "	To Commission for services.....		10.00
" " "	To Bellman		1.00
			$54.93

Received Payment,

H. BURR,
For Green & Williams.

Oct. 30.

No. 455. Equity.

DOWLING
vs.
DOWLING.

The undersigned Trustee in the above cause respectfully represents, that in pursuance of the decree of your Honors passed in the said cause, the property mentioned in the advertisement hereto annexed, was advertised in the National Intelligencer of this City, for the space of two weeks, as will appear by reference to the certificate hereto annexed,—that on the 24th day of July last, at 6 o'clock P. M. said property was offered at public sale in front of the premises by Messrs. Green & Williams Auctioneers, and that one B. F. Isherwood being the highest bidder became the purchaser thereof
358 at and for the sum of Six thousand three hundred and forty six 75/100 dollars ($6346.75/100.)

Said sale was conducted with perfect fairness, in front of the premises and in presence of the persons there assembled, and the purchaser has since complied with the terms of sale.

JOHN F. ENNIS, *Trustee.*

Subscribed and sworn to before me—July 25, 1865.

R. J. MEIGS, *Clk.*

Ratification Nisi, &c.

Filed Oct. 3, 1865. R. J. M., Cl'k.

No. 455. Equity.

DOWLING
vs.
DOWLING.

On motion of complainant's counsel it is this 3d day of October 1865, ordered by the Court that the sale made and reported to the Court by the Trustee in the said cause, be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the Tenth day of November next.

And it is further ordered by the Court, that the above cause be referred to the Auditor, with instructions to take and state
359 the account of the Trustee, making to him in such account all the just and usual allowances, and the balance of the said fund, he shall distribute between the complainant and defendant in said cause, and report to the Court in what proportion said balance shall be paid by the said Trustee.

By order of the court.

Report on Distribution.

Filed October 31, 1865.

No. 455. Equity.

FRANCES M. DOWLING
agt.
MARY G. DOWLING.

Report upon the Trustee's Account and the Distribution of the Fund.

The property brought $6345.75. The costs, taxes, commissions &c. amount to $496.90, leaving $5849.85, for equal division between the two heirs. No claims have been presented against Wm. Dowling under the notice annexed, which I thought it right to give.

The sum now to be deposited by the trustee, is $1618.68 and also $60.00, the Clerk's portion of the commission. When the six and twelve months' notes are paid, the deposits will be, at six months, $2179.03, and, at twelve months, $2242.48; and, on the confirmation of this report, each heir will be entitled to receive $809.34
360 in the cash now in hand, and, at six months, $1089.51, and at twelve months, $1121.24.

The details are shown in D 1.

W. REDIN, *Auditor.*

30th October, 1865.

Supreme Court, District of Columbia.

FRANCES M. DOWLING
against
MARY G. DOWLING.

On the 28th October, instant, at 11 o'clock, in the court room, I shall state the trustee's account and the distribution of the fund, arising from part of Lot No. 20 in Square No. 254, sold to B. F. Isherwood, Esq. If there be any creditors of William Dowling, whose debts are unpaid, they will exhibit the same at the time and place named, and attend as will also the parties and trustee.

W. REDIN, *Auditor.*

D 1.

DR.

John F. Ennis, Esq., Trustee.

1865.

July 24. To purchase money of part of 20, square 254, B. F. Isherwood		$6346.75
⅓d cash; residue at 6 & 12 months.		
" cash portion		$2115.58

361 CR.

By allowances, viz:

Auctioneer & adv'g sale	54.93	
Taxed costs	30.95	
Solicitor's extra fee	25.	
Deed, stamp, recording	13.25	
Publishing order of rat'f'n	4.32	
Trustee's comm'n to the Clerk	60.40	
To the Trustee	157.71	
	218.11	
" taxes	119.77	
Auditor, 1st report	11.62	
2d do.	13.95	
Advertising 30.57	5.	
		496.90
		$1618.68

DR.

Balance of cash payment		$1618.68
Six months' pay't:		
Principal	2115.58	
Interest	63.45	
		2179.03

Twelve months' pay't:

Principal	2115.58	
Interest	126.90	
		2242.48
		$6040.19

Distribution:

	In cash.	6 mos. pay't.	12 mos. pay't.	
To Frances M. Dowling	809.34	1089.51	1121.24	
Mary G. Dowling	809.34	1089.51	1121.24	
	$1618.68	2179.02	2242.48	=$6040.19

W. REDIN, *Auditor.*

30 Oct., 1865.

362 *Advertisement.*

No. 455. Equity.

DOWLING
vs.
DOWLING.

On motion of complainant's counsel, it is this 4th day of October, 1865, ordered by the Court that the sale made and reported to the Court by the Trustee in said cause be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of November next.

By order of the court.

R. J. MEIGS, *Clerk.*

A true copy.

OFFICE OF THE NATIONAL INTELLIGENCER,
WASHINGTON, *Oct.* 30, 1865.

We hereby certify that the advertisement of which the annexed is a copy was published in the National Intelligencer Once a week for three successive weeks, commencing on the 7th day of October, 1865.

EDW. P. FLETCHER,
For the Proprietors.

363 *Final Ratification of Sale.*

Filed April 21, 1866. R. J. M., Cl'k.

In the Supreme Court of the District of Columbia.

No. 455. Equity.

DOWLING
vs.
DOWLING.

On motion of complainant's counsel, it is this 21st day of April 1866, ordered adjudged and decreed, that the sale made by the Trustee in the above cause of the western part of Lot numbered Twenty in square No. 254, (as described in the advertisement of sale annexed to report of the said Trustee)—To B. F. Isherwood, be and the same is hereb*u* finally ratified and confirmed.

By order of the court.

Ratification of Auditor's Report.

Filed April 21, 1866. R. J. M. Cl'k.

No. 455. Equity.

FRANCES M. DOWLING
vs.
MARY G. DOWLING.

On motion of complainant's counsel it is this 21st day of April 1866, ordered and adjudged by the Court, that the report of the *report of the* Auditor made and filed in the above cause on
364 the Third day of October 1865, be and the same is hereby finally ratified and confirmed.

By order of the Court.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 23, both inclusive, to be true and correct copies of the originals in cause No. 455, in Equity, wherein Frances M. Dowling is Complainant and Mary G. Dowling is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of September, A. D. 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

365 COMPLAINANTS' EXHIBIT A 14.

Filed October 8, 1908.

Liber A. No. 1, folio 3 *et seq.*

At the Request of Thomas Beall (Son of George) and John Mackall Gantt the following deed was Recorded this 5th of January 1792, To wit: This indenture, made this twenty eighth day of June in the year of our Lord one thousand seven hundred and ninety one. Between David Burns, of the State of Maryland of the one part and Thomas Beall son of George and John Mackall Gantt of the State of Maryland of the other part. Witnesseth that the said David Burns for and in consideration of the sum of five shillings to him in hand paid by the said Thomas Beall and John Mackall Gantt before the sealing and delivery of these presents the receipt whereof he doth hereby acknowledge and thereof doth acquit the said Thomas Beall and John Mackall Gantt their executors and administrators, and also for and in consideration of the uses and Trusts hereinafter mentioned to be performed by the said Thomas Beall and John Mackall Gantt and the survivor of Them and the heirs of such survivor, according to the True intent and meaning thereof, hath granted, Bargained, sold, aliened, released and confirmed and by these presents doth grant, Bargain, sell, alien, release and confirm unto the said Thomas Beall and John Mackall Gantt and the survivor of them and the heirs of such survivor all the Lands of him the said David Burns lying and being within the following limits, boundaries and lines, To wit: Beginning on the east side of
366 Rock Creek at a stone standing in the middle of the Road leading from George Town to Bladensburg, thence along the middle of the said Road to a stone standing on the east side of the Reedy Branch of Goose Creek thence south easterly making an angle of sixty one degrees and Twenty minutes with the meridian to a stone standing in the road leading from Bladensburgh to the Eastern Branch ferry thence South to a stone eighty Poles North of the east and West Line already drawn from the mouth of Goose Creek to the eastern Branch thence east parallel to the said East and West line to the Eastern Branch Potomack River and Rock Creek to the Beginning; with their appurtenances, except all and every Lot and Lots of which the said David Burns is seized or to which he is intitled, lying in Carrollsburgh or Hamburgh. To have and to hold the hereby Bargained and sold lands with their appurtenances to the said Thomas Beall and John Mackall Gantt and the survivor of them and the heirs of such survivor forever to and for the special Trusts following and no other that is to say that all the said lands hereby Bargained and sold or such part thereof as may be thought necessary or proper to be laid out together with other lands within the said limits for a Federal City with such streets squares, parcels, and lots as

the President of the United States for the time being shall approve and that the said Thomas Beall and John Mackall Gantt or the survivor of them or the heirs of such survivor shall convey to the Commissioners for the time being appointed by Virtue of an act of Congress "entitled" an act for establishing the Temporary and Permanent seat of the Government of the United States,
367 and their successors for the use of the United States forever.

These said Lots shall be such of the said Squares, parcels, and lots as the President shall deem proper for the use of the United States, and that as to the residue of the Lots into which the said Lands hereby Bargained and sold shall have been Laid off and divided that a fair and equal division of them shall be made and if no other mode of division shall be agreed on by the said David Burns and the Commissioners for the time being then such residue of the said Lots shall be divided, every other lot alternate to the said David Burns, and it shall on that event be determined by Lot whether the said David Burns, shall begin with the Lot of the lowest number laid out on his said lands or the following number, and all the said Lots which may in any manner be divided or assigned to the said David Burns shall thereupon together with the party the said Bargained and sold lands if any which shall not have been laid out in the said City be conveyed by the Thomas Beall and John Mackall Gantt or the survivor of them or the heirs of such survivor to him the said David Burnes his heirs and assigns, and that the said other Lots shall and may be sold at any Time or times in such manner and on such Terms and conditions as the President of the United States for the time being....., that the said Thomas Beall and John Mackall Gantt or the survivor of them or the heirs of such survivor on the order and direction of the President convey all the said lots so sold and Ordered to be conveyed to their respective purchasers in fee simple according to the
368 terms and conditions of such purchaser, and the produce of the sales.....when sold as aforesaid shall in the first place be applied to the payment in money to the said David Burns, ... administrators or assigns for all the part of the said lands hereby Bargained and sold which shall have been laid off in lots, squares or parcels and appropriated as aforesaid to the use of the United States ..... per acre not accounting the said Streets as part thereof and the said Twenty five pounds ..... paid or in any other manner satisfied that then the produce of the same sales or what thereof may remain as aforesaid ..... money or securities of any kind shall be paid, assigned, transferred, and delivered over to the President for the time being as a grant of money and to be applied for the purposes and according to the act of Congress aforesaid but the said conveyances to the said David Burns his heirs or assigns as well as the conveyances to the purchasers shall be on and subject to such Terms and conditions as shall be thought reasonable by the president for the time being for regulating the materials and manner of the Buildings and improvements on the

lots generally in the said City or in particular streets or parts thereof for common convenience, safety, and order, Provided such terms and conditions be declared before the sales of any of the said lots under the direction of the President. And in trust farther, and on the agreement that he the said David Burnes his heirs and assigns shall and may continue his possession and occupation of the
369 said land hereby Bargained and sold at his and their will and pleasure until/ the same shall be occupied under the said appropriations for the use of the United States as aforesaid by purchasers and when any lots or parcels shall be occupied under purchase or appropriations as aforesaid then and not till then shall the said David Burns relinquish his occupation thereon. And in trust also as to the trees, timber and Wood on the premises that he the said David Burnes his heirs or assigns may freely cut down, take, and use the same as his and their property except such of the trees and wood growing as the President or Commissioners aforesaid may judge proper, and give notice, shall be left for ornament for which the just and reasonable value shall be paid to the said David Burns his executors, administrators or assigns, exclusive of the twenty five pounds per acre for the land, and in case the arrangements of the streets, lots, and the like will conveniently admit of it, he the said David Burnes his heirs and assigns shall if he so desires it possess and retain his Buildings and graveyard if any on the hereby bargained and sold lands paying to the President at the rate of Twelve pounds ten shillings per acre of the lands so retained because of such Buildings and Graveyards, to be applied as aforesaid and the same shall be thereupon conveyed to the said David Burnes his heirs and assigns with the Lots, but if the arrangements of the Streets lots and the Like will not conveniently admit of such retention and it shall Become necessary to remove such Buildings then the said
370 David Burnes his executors, administrators or assigns, shall be paid the reasonable value thereof in the same manner as squares or other ground appropriated for the use of the United States are to be paid for, and Because it may so happen that by deaths or removals of the said Thomas Beall and John Mackall Gantt and from other causes, difficulties may occur in fully perfecting the said trust by executing all the said conveyances if no eventual provision is made it is therefore agreed and covenanted between all the said parties that the said Thomas Beall and John M. Gantt or either of them or the heirs of either of them lawfully may and that they at any time at the request of the President of the United States for the time being will convey all or any of the said lands hereby Bargained and sold which shall not then have been conveyed in execution of the Trusts aforesaid to such person or persons as he shall appoint in fee simple subject to the trusts *to the trusts* then remaining to be executed and to the end that the same may be perfected, and it is further agreed and granted Between all the said parties and each of the said parties doth for himself respectively and for his heirs, covenant and grant to and with the others of them that he and they shall and will if required by the President of the United States for the time being join in and execute any further deed or deeds for carrying into effect the trusts, purposes and true intent of this present deed.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

371 DAVID BURNES. [SEAL.]

Signed, Sealed and delivered in presence of—
R. T. HOOE.
DAN JENIFER, JUNR.

On the Back of which deed was the following endorsements, To wit:

Received on the day and year first within written of and from the within named Thomas Beall and John Mackall Gantt the sum of five shillings being the consideration within mentioned to be by him paid to me.

DAVID BURNES.

Witness:
R. T. HOOE.
DAN JENIFER, JUNR.

On the 29th day of June 1791 came before me one of the Judges of the General Court the within named David Burnes—acknowledged the within deed to be his act and deed, and on the same day and year came also before me Ann the wife of the said David Burns, and she being by me privately examined apart from and out of the hearing of her said husband did release, and relinquish all her right, title, and interest of dower in the within Bargained and sold Land and appurtenances and she declared that she made such release of her dower and this her acknowledgement Voluntarily and freely without being induced thereto by fears or threats of or ill usage from her said husband or through fear of his displeasure.

Before
TH. JOHNSON.

372 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber A. No. 1, folio 3 *et seq.*, one of the Land Records of the District of Columbia, in so far as it is now possible to reproduce said above mentioned instrument from said Land Records, the missing portions of said instrument, indicated herein by dashes, being now destroyed.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 19th day of June, A. D. 1908.

[SEAL.]
R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

373 EXHIBIT A. H .No. 2.

Filed October 16, 1905.

The Real Estate Title Insurance Company of the District of Columbia, in consideration of One hundred Dollars to said Company paid by —— —— doth hereby certify that the annexed Abstract of

Title, signed by M. Ashford and dated the 2d day of May A. D. 1882 contains all transfers and all unreleased and unexpired trusts, mortgages and leases, and all unsatisfied builders' liens, judgments or decrees in anywise affecting the title to the ground described in said Abstract, to wit: Sub Lots 28 and 29 in Square 254 and appearing of record at the date of the issuance of said Abstract.

This Certificate is issued to —— —— and for — benefit only.

Witness the Corporate seal and the signatures, respectively, of the President and Secretary of said Company, hereunto affixed, this Second day of May A. D. 1882.

[SEAL.] M. ASHFORD, *President.*

B. BEALE, *Secretary.*

374 *Abstract of Title.*

Lots 28 and 29, in the subdivision of original Lot 20, in Square 254.

In the division between the *U. S. Commissioners* and *David Burnes*, the original proprietor, original Lot 20 was allotted to the *Commissioners.*

OCT. 5, 1792.

Original Lot 20.

The Records show that Lot 20 was sold to Samuel Blodget, and the title of the Commissioners was divested by decree hereinafter noted.

Samuel Blodget
to
Thos. Johnson, Jr., & Thomas Peter.

Deed.
Dated Jan. 28, 1794.
Recorded Apr. 23, 1794, B, fol. 9.
In trust to secure Hotel Lottery.

Samuel Blodget
to
Uriah Forrest and Benj. Stoddert.

Deed.
Dated July 7, 1795.
Recorded July 24, 1795, B, fol. 265.
In trust to secure Hotel Lottery No. 2.

375 Uriah Forrest
to
Benj. Stoddert.

Deed.
Dated Sept. 1, 1801.
Recorded Sept. 2, 1801, G, fol. 265.
Assigns all interest in next above.

East 20 Feet of Original Lot 20.

Samuel Blodget
to
James Dougherty.

Lease.
Dated Apr. 13, 1801.
Recorded Oct. 20, 1801, G, fol. 316.
For 99 years, renewable forever.
Rent, $40 per annum clear of taxes, with right of purchase for $500.

Robert S. Bickley
vs.
Blodget *et al.*

Chancery No. 1, Cause 8.
1802, Oct. 9.—Daniel C. Brent appointed trustee to convey.

Henry Pratt & George Budd
to
Robert S. Bickley.

Deed.
Dated Oct. 31, 1806.
Recorded Jan., 1807, Q, fol. 178.
Assigns all interest at sale under above decree and request- Brent to convey to Bickley.

Daniel C. Brent, Tr.; Thomas Peter, U. S. Superintendent,
to
Robert S. Bickley.

Deed.—
Dated Apr. 3, 1807.
Recorded Apr. 4, 1807, R, fol. 26.
Recites sale under above decree and assignment of Pratt & Budd.
Convey- the ground rents reserved by Samuel Blodget by indenture made between him and James Dougherty Apr. 13, 1801.

376 Robert S. Bickley
to
James Dougherty.

Deed.
Dated May 1, 1813.
Recorded Sept. 15, 1813, A. F., fol. 240.

James Dougherty's
Will, June 27, 1826.
Probated July 11, 1826, Wills 3, fol. 388.
All estate to wife Mary absolutely, Wm. Hayman to be executor.
Executor qualified July 12, 1826.

Mary Dougherty's
Will, July 3, 1830.
Probated Aug. 9, 1830, Wills 4, fol. 55.
Devise- house and Lot 20, Sqr. 254, on F St., to William Hayman for life and after his death to his children and their heirs forever; appoints said William executor.

Wm. Hayman
to
George Cover & Peres Packard.

Deed of trust.
Dated Feb. 11, 1842.
Recorded Mar. 1, 1842, W. B. 92, fol. 14.
"Part lot 20."
Secure- creditors generally.

Wm. Hayman *et al.*
vs.
Anna A. Hayman *et al.*

No. 478, Chancery Rules 4.
1847, Mar. 5.—Bill for partition by sale.
1847, May 18.—Sale decreed. Wm. Redin, trustee.
1847, Oct. 20.—Trustee reports sale to John Byrne.

John Byrne
to
George Cover.

Deed of trust.
Dated July 30, 1847.
Recorded Aug. 3, 1847, W. B. 136, fol. 23.
Secure- Wm. Redin, tr., purchase-money.

377

John Byrne
to
Wm. Redin.

Deed of trust.
Dated Feb. 19, 1848.
Recorded July 22, 1850, J. A. S. 15, fol. 283.

Wm. Redin, trustee; George Coover, trustee,
to
Benj. F. Isherwood.

Deed.
Dated Sept. 25, 1852.
Recorded Oct. 9, 1852, J. A. S. 46, fol. 198.
Reciting sale under the two trusts above noted.
Redin also conveys as trustee under above decree.

Benj. F. Isherwood *et ux.*
to
Charles Hicks.

Deed.
Dated Sept. 21, 1853.
Recorded Nov. 16, 1853, J. A. S. 67, fol. 17.
In trust with power in grantee and his heirs to sell and convey in fee.

Henry R. Hicks, sole heir of Chas. Hicks,
to
Benj. F. Isherwood.

Deed.
Dated Aug. 4, 1881.
Recorded Sept. 29, 1881, Lib. 980, fol. 397.
Recites the above deed and that said Chas. Hicks died without having sold any portion of the property conveyed by said deed.
This deed made to revest the title in said Isherwood.

West 19 Feet 11½ Inches of Original Lot 20.

Samuel Blodget
to
Edward Frethy.

Lease.
Dated Apr. 14, 1801.
Recorded Oct. 7, 1801, G, 299.
For 99 years, renewable forever, with right of purchase.

378 Edward Frethy
to
Frederick Betz.

Assignment of above lease.
Dated Sept. 19, 1801.
Recorded Oct. 7, 1801, G, fol. 301.

Frederick Betz
to
George Betz.

Assignment of above.
Dated Jan. 24, 1803.
Recorded May 9, 1803, I, fol. 325.

George Betz
to
John Thorpe.

Assignment of above.
Dated Feb. 15, 1804.
Recorded Feb. 15, 1804, K, 204.

Robert S. Bickley
vs.
Blodget *et al.*

Chancery No. 1, Cause 8.
1802, Oct. 9.—Daniel C. Brent appointed trustee to sell and convey.

D. C. Brent, trustee; Thomas Peter
to
Robert F. Howe.

Deed.
Dated Jan. 15, 1807.
Recorded June 6, 1807, S, fol. 1.
Ground rent reserved by Blodget in lease to Edward Frethy dated Apr. 4, 1801.
Brent sells under above decree and conveys interest of all parties to said cause. No reference given to record of lease, and no lot or square given.

Corp. of Washington
to
Wm. Dowling.

Tax deed.
Dated Aug. 17, 1830.
Recorded Feb. 8, 1831, W. B. 1, fol. 144.
Sold Feb. 25, 1826, in name of Rob't F. Howe.

379

Wm. Dowling
to
Robert F. Howe.

Deed.
Dated May 30, 1831.
Recorded May 30, 1831, W. B. 36, fol. 299.
Conveys his interest in above deed, reserving his leasehold interest therein.

Sarah How and Edward P. Pearson, Ex'rs of Rob't F. Howe,
to
Wm. Dowling.

Deed.
Dated July 18, 1835.
Recorded Oct. 16, 1835, W. B. 56, fol. 449.
Recites will of Rob't F. Howe, of Burlington Co., N. J., July 28, 1830, in surrogate office of said county, authorizing his executors to sell and convey real estate, June 4, 1831.

Walter S. Cox
to
Henry Naylor & Jno. A. Smith.

Deed.
Dated Sept. 21, 1849.
Recorded Nov. 13, 1849, J. A. S. 8, fol. 444.
Conveys said west 19 ft. 11½ inches of lot 20, being same bought by Cox at marshal's sale under Judicials 192, March term, 1836.

John A. Smith, Henry Naylor
to
Wm. Dowling.

Deed.
Dated Oct. 29, 1851.
Recorded Apr. 27, 1852, J. A. S. 35, fol. 487.

Wm. Dowling's
Will, Oct. 15, 1852.
Probated Oct. 23, 1852, Wills 7, fol. 11.
All his estate to son William, "to be held by him for and during his natural life, and after the death of my said son William, then I give and bequeath the same and every part thereof to his heirs at law forever."

380 Richard Reeder, as guardian of Frances M. & Mary G. Dowling,
to
Castalio Hosmer.

Lease.
Dated Jan. 13, 1863.
Recorded June 15, 1863, N. C. T. 7, fol. 1.
For 3 yrs. from Feb. 1, 1863.
Assigned to Phineas Merwin Nov. 10, 1863. N. C. T. 18, fol. 125

Frances M. Dowling, Mary G. Dowling
to
John F. "Ennis," Tr.

Deed.
Dated Sept. 11, 1865.
Recorded Oct. 28, 1865, R. M. H. 3, fol. 350.
Grantors convey as heirs of Wm. Dowling, Sr., and Wm. Dowling, Jr. In trust to carry out provisions in decree below, No. 455.

Frances M. Dowling
vs.
Mary G. Dowling.

Equity 455, docket 7.
1865, June 22.—Bill for sale.
1865, July 5.—Decree for sale. Jno. F. Ennis, trustee.
1865, July 25.—Trustee reports sale to B. F. Isherwood.
1866, Apr. 21.—Final ratification.

John F. Ennis, Tr.,
to
Benj. F. Iserwood.

Deed.
Dated May 11, 1866.
Recorded May 11, 1866, R. M. H. 10, fol. 442.
Reciting sale under above decree.

Middle 11 Feet 11 Inches of Original Lot 20.

Samuel Blodget
to
Edward Fennell.

Lease.
Dated Apr. 28, 1804.
Recorded Apr. 30, 1804, K, fol. 317.
99 years, renewable forever, with right of purchase for $300.

381

Edward Fennell's
Will, Oct. 31, 1809.
Codicil, Nov. 18, 1809.
Probated Dec. 12, 1809. Wills 1-162.
All estate to wife Margaret, absolutely.

Margaret Fennell's
Will, Mar. 8, 1816.
Probated Apr. 5, 1816. Wills 2-13.
All estate to Alexander L. Joncherez in fee and appoints him sole executor.

Administration upon
Estate of Alex. L. Joncherez issued to Ann Joncherez 1822. Docket 2, Case 349.
NOTE.—In final account returned May 13, 1824, she charges herself with value of leasehold on F St., $200. Account overpaid $1,169.65. Docket 2, 508.

Bickley
vs.
Blodget *et al.*

Decree Nov. 5, 1813. For sale. Wash. Boyd, trustee.
1816, Oct. 14.—Sold to Chas. Glover.
1818, June 3.—Sale finally ratified.
" " 21.—John Davidson appointed trustee *vice* Boyd.

John Davidson, Tr.,
to
Charles Glover.

Deed.
Dated May 8, 1818.
Recorded June 11, 1819, A. V., 20.
Recites sale under above decree.
Recites dates as above. (Deed dated before ratification and appointment of trustee.)

Charles Glover
to
Abraham Bradley.

Deed.
Dated Feb. 15, 1821.
Recorded Mar. 31, 1821, W. B. 2, fol. 201.

1827, June 8.—Administration on estate of Abraham Bradley to Mary G. and Wm. A. Bradley.

382 Ann Joncherez
to
Wm. Coleman.

Deed.
Dated Nov. 11, 1822.
Recorded Nov. 15, 1822, W. B. 6, fol. 344.
Frame house on part lot 20, sqr. 254, 11 ft. 11 inches on F St.

Wm. Coleman
to
Elizabeth Hutton.

Lease.
Dated Aug. 1, 1823.
Recorded Mar. 9, 1850, J. A. S. 10, fol. 509.
Assignment of 99-yr. lease and renewable. Same land as leased in Lib. K., 317, by Sam'l Blodget to Edward Fennel Apr. 28, 1804.

No will of Elizabeth Hutton and no administration.

Ann Gardiner & Isaac G. Hutton
to
John S. Hutton.

Deed.
Dated Apr. 4, 1850.
Recorded Sept. 6, 1850, J. A. S. 16, fol. 402.
All interest as heirs of Elizabeth Hutton.
In trust for Mary Blincoe, with power to her to deed or will, and in default thereof in trust for her heirs.

Ashton S. H. White and wife, heirs-at-law of Abraham Bradley & John S. Hutton & Mary A. Blinco,
to
Benj F. Isherwood.

Deed.
Dated Sept. 21, 1852.
Recorded Nov. 1, 1852, J. A. S. 47, fol. 31.

Benj F. Isherwood and wife
to
Charles Hicks.

Deed.
Dated Sept. 21, 1853.
Recorded Nov. 16, 1853, J. A. S. 67, fol. 17.
In trust with power in grantee and his heirs to sell and convey in fee.

383 Henry R. Hicks, sole heir of Charles Hicks,
to
Benj F. Isherwood.

Deed.
Dated Aug. 4, 1881.
Recorded Sept. 29, 1881, Lib. 980, fol. 397.
Recites above deed, and that said Chas. Hicks died without having sold any portion of the property conveyed by said deed.
This deed made to revest the title in said Isherwood.

Winfield S. Smith *et ux.*
to
Wm. J. Miller.

Deed of trust.
Dated Nov. 28, 1881.
Recorded Nov. 29, 1881, Lib. 991, fol. 66.
Secure Jas. E. Miller $445.95 in 3 mos., 7%.
Premises No. 1314 F St.
Record shows no title in grantor.

A copy of this will has been obtained from New Jersey & properly recorded in the office of the Register of Wills, Wash. D. C.
Nov. 2d, 1883—Decree of court ratifying and confirming sale to J. Byrne.
Oct. 16", 1883—4"—By reference to the original deed from Ennis, trustee, it was discovered that the name was correctly spelled, but was copied wrong in the records. The Recorder of Deeds made the proper correction & the record is straight now.

J. B. LARNER, *Att'y.*

The only imperfections I find in the record of this title are—
1st. Absence of Record divesting John Thorpe of his leasehold interest acquired under the assignment from George Betz of Feb. 5, 1804. See page 6 of the Abstract.
2d. Absence of record of will of Robert F. Howe authorizing his executors to sell his real estate. See Deed from his executors to Dowling (page 7 of Abstract).
3d. No ratification of sale in cause of Hayman *vs.* Hayman. (See page 4 of Abstract.)
4th. Misnomer in the grantee's name in deed from Ennis, trustee, to Isherwood. (See page 8 of the Abstract.)
With these exceptions the title according to the record is good in Benjamin F. Isherwood and free of all lien or incumbrance except taxes as certified by the Collector.

May 2d, 1882. M. ASHFORD.

384 *Demurrer.*

Filed October 19, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD ET AL., Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

The defendant, Joseph Parker Camp, not confessing or admitting all or any of the matters and things set forth in the bill of complaint and the amendments thereto to be true as therein alleged, does demur thereto and for cause of demurrer shows that said bill and the amendments thereto does not set forth or establish such a case as entitles them to the relief prayed.

That the complainants have a complete and adequate remedy at law.

That the Court is without jurisdiction in the premises.

W. E. AMBROSE,
Solicitor for Defendant.

DISTRICT OF COLUMBIA, *ss:*

385 I, Joseph Parker Camp, being first duly sworn, on oath say: That I am the defendant named above and that the above is not interposed for the purpose of delay.

JOS. PARKER CAMP.

Subscribed and sworn to before me this 16th day of October, A. D., 1908.

[SEAL.]

THEODORE BLOCK,
Notary Public, D. C.

I hereby certify that in my opinion this demurrer is well founded in law.

W. E. AMBROSE,
Solicitor for Defendant.

One of the points of law to be argued on hearing of this demurrer is that the complainants have a complete and adequate remedy at law.

W. E. AMBROSE,
Solicitor for Defendant.

Opinion.

Filed December 16, 1908.

In the Supreme Court of the District of Columbia.

No. 25974. Equity.

KATE WILLARD BOYD ET AL., Complainants,
v.
JOSEPH PARKER CAMP, Defendant.

The complainants are trustees appointed by the last will of the late Caleb C. Willard, and they bring this suit to enjoin the
386 prosecution of an ejectment suit which the defendant brought in the Supreme Court of the District of Columbia against the said Willard, on February 12, 1904, the same being No. 46,756 At Law.

The property sought to be recovered by the ejectment suit is described as original lot No. 20, in Square No. 254, in the City of Washington.

The bill prays for such injunction, if the court shall be of opinion that the complainants have succeeded to all the right, title, and interest, which Samuel Blodget had to the said lot; but if the court should be of the opinion that complainants did not have such title, but that the defendant herein is vested with the reversion in fee as assignee of the heirs of said Samuel Blodget, then that the defendant be decreed to renew the ninety-nine year leases, which were renewable forever; and that, upon payment to the defendant by the complainants of such sums, if any, as the court may deem right and equitable, that the defendant be decreed to forthwith convey to the complainants such interest in reversion.

The bill sets out at length the history of the title to said property, from which it appears that said original lot 20 was allotted in the division between the original proprietors and the United States Commissioners, to the United States Commissioners, and was sold by them to Samuel Blodget, Jr. That no certificate of such sale appears of record, but said Blodget assumed ownership over it, and conveyed the said lot to Thomas Johnson, Jr., and Thomas Peter, in trust, to
387 secure the United States Commissioners from loss by reason of any default of said Blodget, in respect to the hotel lottery No. 1. This deed was dated January 28, 1794, and is recorded in Liber B, Folio 9, of the Land Records of this District.

Thereafter on April 14, 1801, said Blodget executed a ninety-nine year lease, renewable forever, and with the privilege of purchase, to one Edward Frethy, for the west 19 feet 11½ inches of said lot. Said lease was recorded in Liber G, Folio 299.

On April 13, 1801, said Blodget executed a similar lease to James Daugherty, for the east 20 feet front of said lot, which is recorded in Liber G, Folio 316; and thereafter, on April 28, 1804, he executed

a similar lease to Edward Fennell, for the remaining portion of said lot, being 11 feet 11½ inches front, lying between the two portions of said lot described in the leases to said Frethy and said Daugherty, and which lease to Fennell was recorded in Liber K, Folio 317. All these leases were subject to the deed of trust to Johnson and Peter, which was recorded April 23, 1794.

Said Blodget never made any other conveyances of the said lot, so far as disclosed by the record.

He was made defendant, however, in an equity suit filed by one Robert S. Bickley, on the 9th of October, 1802, in the then Circuit Court of this District, known as Chancery Cause No. 8, Docket No. 1.

The bill in that case prayed for a sale of all of the property then owned by the said Blodget in this District, being a large num-
388 ber of lots, for the purpose of paying the judgment which was awarded to the complainant, as therein described. Among the pieces of property described in the decree therein, were the "ground rents" which the said Blodget owned, in so much of said lot 20 as was conveyed by the leases to said Daugherty and Frethy.

Under this proceeding Daniel Carroll Brent, Esq., was appointed trustee to make a sale, and he sold the "ground rents" on that portion of said lot 20 covered by the Daugherty lease, to Henry Pratt for $360, and the ground rents on that part covered by the Frethy lease, to one Robert F. Howe, for $400.

The amount received for sales made by the trustee, Brent, were insufficient to pay the complainant's claim; and thereafter Bickley filed a supplemental bill, on May 30, 1810, praying that certain other property of Blodget should be sold, and including therein the "ground rent and reversionary interest" in that portion of said lot 20 covered by the Fennell lease.

Under this supplemental bill proceedings were had, by which that portion of said lot 20 was sold to one Charles Glover, and the trustee conveyed to him a fee simple title therefor.

In this equity proceeding, Thomas Munroe, then United States Commissioner, was made a party defendant, and directed by the decree to join with the trustee in all deeds made to purchasers, for the purpose of conveying the record title, which was then supposed to be in the United States; but said Munroe did not join in the trustee's deed for any portion of the said original lot 20, in said square.

389 The bill in said equity cause averred that the leases to Daugherty and Frethy were void, because executed subsequently to the deed of trust aforesaid to Johnson and Peter; but the decree seems to have recognized the said leases, and decrees a sale of the "ground rents."

By mesne conveyances all the title which was conveyed by the trustees and grantors under the said suit in chancery, together with the lease-hold title, and in addition thereto, a tax title to a portion of the said lot, was finally vested in one Benjamin F. Isherwood. The said Isherwood purchased the same at public auction, and received deeds therefor, conveying the title to him in fee simple.

The bill avers that said Isherwood, from the time of the deeds to

him, the last of which was May 11, 1866, claimed title to the whole of said lot, as against the whole world. That he collected for his own benefit rents thereafter from houses which were upon the said lot, made and paid for repairs upon the same, and paid all taxes and charges thereon; and on the 16th day of August, 1873, he made and recorded in the office of the Surveyor of the District of Columbia, a subdivision of said lot, into sub-lots 28 and 29. That the complainants' testator, Caleb C. Willard, purchased all of the said lot 20, from said Isherwood, and received from him a deed conveying the title in fee simple, on May 4, 1882; and thereafter he held possession thereof, and improved the same by erecting buildings thereon, or on portions thereof, and continued to hold possession thereof as against all the world, up to the time of his death, August 2, 1905, when the title passed to the complainants by his will, which was admitted
390 to probate and record on the 29th day of August, 1905.

The bill contains several other averments, giving in detail the various conveyances of said property, and stating the history, to some extent, of what is known as the "Blodget claim" in this District, and of the result of certain ejectment suits brought by persons claiming under the heirs of said Blodget for real estate in this District; and stating also that the defendant Camp claims that he is the assignee of the heirs at law of said Blodget; and that he claims that there was in said heirs a reversion in fee in and to said lot 20, and that the said leases have expired without the lessees exercising their privilege of purchase; and that he is entitled to recover the possession and title in fee simple.

The defendant has filed a demurrer to the bill, stating as grounds therefor, that the complainants have a complete and adequate remedy at law, and that this court is without jurisdiction in the premises.

The complainants contend that the defendant cannot in any event recover that portion of said lot 20 which was covered by the lease to said Fennell, because as to that the title in reversion passed without question under the sale in the chancery suit of Bickley against Blodget. That is, the whole title which Blodget had in that portion of the lot was sold and conveyed under the decree in that case.

Complainants also contend that all the interest which said Blodget had in the other portions of said lot *were* sold and conveyed
391 under the decree in that case by the description of "ground rents," as fully as if the bill had expressly set out in reference to those two portions of the lot, the reversionary interest of said Blodget, they claiming that the words "ground rents" covered the title in reversion, and all the title which remained in said Blodget after the execution of said leases; and that, therefore, the title to those two portions of the lot is vested in the complainants as fully as it was in Samuel Blodget when he executed the said deed of trust to Johnson and Peter.

If they are correct in this, and if, as stated in the bill, the equitable title to all of said lot 20 is still outstanding in the United States, then the complainants are vested with an equitable title in fee simple; and having this equitable title, they contend that their legal remedy,

although they have a good defense at law, is not as full, adequate, and complete, as is their remedy in the court of equity.

Each of the lessees in the several leases had the right at any time during the life of his lease, to acquire the title in reversion by the payment of the sum of $500; and he had a right to have the lease renewed forever on the same terms; but the right to receive the ground rents, and the title of the lessees, having been merged by conveyances, or by the presumptions of law, in the same person, no ground rents were in fact paid by any one to any one, under any of the said leases, for more than fifty years.

The title of lessees and lessor was merged, and it passed from owner to owner as a fee simple, and it is claimed to be held by
392 adverse possession, under color and claim of such absolute title, as against the heirs and assigns of said Blodget, and all the world.

The first question that arises is the one of jurisdiction. Has the equity court authority under the facts alleged in this bill, to grant the relief prayed, or any substantial relief which the case may require?

If the holding of the complainants and their predecessors, as shown by the bill, has been adverse, and has ripened into a good possessory title, then it seems clear, under the authority of the case of Sharon *v.* Tucker, 144 U. S., 533, that the equity court has jurisdiction for the purpose of having the title of the complainants judicially ascertained and declared, and thus made a good record title, and to enjoin the defendant from asserting title to the said premises, by reason of any claim of ownership on his part, which would disturb complainants in their possession and use of said property.

There is no question that if the possession of the complainants and their grantors was adverse, that the allegations of the bill are sufficient to warrant the establishment of a perfect title at law by such adverse possession under color of title.

It is contended by counsel for the complainants that under the principles decided in the case of William *v.* Watkins, 3rd Peters, 43, that the rights of the lessees having been extinguished by a merger with the rights of the lessor, through the various conveyances and proceedings recited in the bill, that the possession of complainants, under claim of holding the title in fee simple, is adverse, and
393 entitles the complainants to a decree establishing their title of record, and quieting the same in them.

It is also contended by complainants, that even if no other ground of jurisdiction exists here, the court has jurisdiction by reason of the fact that the remedy under the complex situation stated in the bill, is more complete and adequate in equity than at law; and in view of the length of time, as shown by the history of the case, and the embarrassment that the complainants might suffer in defense of the suit at law, by reason of having no title of record from the United States Commissioners, and by reason of the character of the litigation brought about by those claiming under the old Blodget title in this District, and by reason of other facts stated, I am inclined to think that there can be no question as to the correctness of their con-

tention, and that the court of equity ought to take jurisdiction by virtue of these facts, notwithstanding the complainants might have a remedy at law. A court of equity may entertain a suit to enjoin a vexatious litigation which has no lawful right to be instituted or maintained.

In the case of Kilbourn *v.* Sunderland, 130 U. S., 514, which went up from this District, the court held that the jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would confer under the same circumstances.

I am therefore inclined to hold that this court has jurisdiction to hear and determine this case; and shall consider the sufficiency of the facts stated in the bill to entitle the complainants to
394 the relief asked for by them.

It seems clear from these allegations, that the complainants have all the rights which were held by the lessees under the said leases, and may be allowed to have renewals of said leases, unless they have been debarred therefrom by gross laches; and they sufficiently explain the reasons for the delay in asking for such relief, so as to relieve the case from that objection.

This kind of conveyance, by which a ninety-nine year lease is made renewable forever, and a "ground rent" reserved by the lessor, is a form of conveyance which has been in vogue in Maryland since the colonial days, and we naturally turn to the authorities in that state for the rules governing such cases.

In the case of Banks *v.* Haskie, 45 Maryland, 207, the court recited the history of such conveyances, and what they were intended to do, and allowed a lessee to have a renewal of his lease several years after its expiration.

In that case Chief Justice Miller used this language:

"These lease-hold interests devolve upon the personal representatives of the owner, are in terms made assignable, and they, as well as the ownerships in fee under the denomination of "ground rents," are subjects of daily transfer, and are constantly sought for as safe investments of capital."

If the complainants, however, in this case, have all the interest that Blodget had, in addition to the interest of the lessees, then
395 there is no occasion to ask for a renewal of the leases, for their title is complete in that event as it now stands; and we therefore come to the question as to whether the mesne conveyances, and the proceedings in the Chancery case of Bickley *v.* Blodget, by which the "ground rents" were sold and conveyed, have placed in the complainants the fee simple title, or title in reversion.

In the case of Ogle, *et al. v.* Reynolds, *et al.*, 75 Maryland, 145, it is held that the reversionary interest in lots on which a ninety-nine year lease was given, is generally designated and known as "ground rents"; and in that case the court gave that construction to a will where the testatrix had devised her "ground rents" in certain property.

In the light of these and other authorities, I think a proper construction of the decree in the Chancery suit of Bickley *v.* Blodget,

and of the conveyances subsequent thereto, requires me to hold that the words "*ground rents*" were used therein as the equivalent of title in reversion; that the words did not mean the rents for the term of the leases only, but the right to receive the rents and profits of the ground forever; and that, therefore, there was nothing left in Blodget to descend to his heirs, by which they could give any title in reversion to the defendant.

The result is that the demurrer to the bill must be overruled.

JOB BARNARD, *Justice.*

396 *Final Decree.*

Filed December 28, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD ET AL., Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

This cause came on to be heard at this December special term of the Court upon a demurrer filed by the defendant, Joseph Parker Camp, to the original bill of the complainants Kate Willard Boyd and others, and was argued by counsel and considered by the Court, and thereupon it is this 28th day of December, A. D. 1908, adjudged, ordered and decreed that the said demurrer be and the same is hereby overruled. And thereupon the defendant having in open Court elected to stand upon his said demurrer it is adjudged, ordered and decreed that the said complainants are now vested with all of the title to original lot numbered 20 in Square numbered 254 as the same are known and numbered on the ground plan of the City of Washington, District of Columbia, formerly vested in one Samuel Blodgett, now deceased, to whom said original lot was sold by the United States Commissioners, to which Commissioners the said lot had been assigned in the division between the original proprietor of said square, David Burns, and the said United States Com-
397 missioners; Further: That the further prosecution of an action of ejectment, pending in this Court upon its law side and brought by the said defendant, Joseph Parker Camp, as plaintiff, against Caleb C. Willard, the devisor of the complainants to this bill, as defendant, the said action of ejectment numbered 46,756 upon the law docket of the Court, and brought to recover possession of the said original lot numbered 20 in square numbered 254, and the pendency of the said action of ejectment, and the assertion of a legal title to the said lot by the said defendant, Joseph Parker Camp, all and each constitute a cloud upon the said title of the said complainants to the said lot and further constitute vexatious litigation

on the part of the said defendant, Joseph Parker Camp, against the said complainants to this bill and that, by reason of the premises, this Court sitting as a Court of Equity has jurisdiction to entertain this suit and to give relief therein more speedy, complete and adequate than any relief which the said complainants can obtain at law. And therefore it is further adjudged, ordered and decreed that the said defendant, Joseph Parker Camp, and his agents and attorneys and all persons claiming and to claim under him, the said defendant, be and they hereby are perpetually enjoined from the further prosecution of the aforesaid action of ejectment, pending in this Court upon its law side, and brought by the said defendant, Joseph Parker Camp, as plaintiff, against Caleb C. Willard, the devisor of the complainants to this bill as defendant, the said action of ejectment numbered 46,756 upon the law docket of the Court and brought
as aforesaid to recover possession of original lot numbered
398 20 in square numbered 254 as the same was known and numbered on the ground plan of the said City of Washington, District of Columbia. And further it is adjudged, ordered and decreed that the said defendant, Joseph Parker Camp, his agents, attorneys and assigns and all persons claiming or to claim the aforesaid lot of ground or any part thereof, under or through him, the said Joseph Parker Camp, be and they hereby are each and every of them perpetually enjoined from instituting any further proceedings, whether at law or in equity, for the possession of, or for the assertion of any claim to, the aforesaid lot of ground, or any part thereof derived from or through the said Samuel Blodgett, deceased, to whom said original lot was sold as aforesaid by the United States Commissioners, to which Commissioners said lot had been assigned as aforesaid in the division between the original proprietor of the said square, David Burns, and the said United States Commissioners. Further it is adjudged, ordered and decreed that the complainants recover against the said defendant their costs in the pending case to be taxed by the Clerk and that they have execution thereof as at law, and from the above decree the defendant appeals in open Court to the Court of Appeals of the District of Columbia and the above appeal is allowed and bond fixed in the sum of Two hundred Dollars ($200).

JOB BARNARD, *Justice.*

399 *Memorandum.*

January 18, 1909.—Appeal bond approved and filed.

Stipulation to File Exhibit.

Filed February 8, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25974.

KATE WILLARD BOYD ET AL., Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

It is stipulated by counsel for complainants and defendant in the above entitled cause that a certified copy of the abstract of title and the certificate thereto of William Redin filed in the Supreme Court of the District of Columbia in Law cause No. 46,756 shall be filed as an exhibit in Equity cause No. 25,974 and shall be made a part of the record of said last numbered cause.

JOHN B. LARNER,
Attorney for Complainants.
WM. E. AMBROSE,
Attorney for Defendant.

400 *Directions to Clerk for Preparation of Transcript of Record.*

Filed February 8, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

No. 25974.

KATE WILLARD BOYD, HENRY WILLARD, GEORGE E. HOWE, Complainants,
vs.
JOSEPH PARKER CAMP, Defendant.

In preparing the transcript of the record in this case for the Court of Appeals the Clerk will please copy,—

1. Bill filed January 22, 1906.
2. " all exhibits to—A, B, C, D & E.
3. Restraining order filed January 22, 1906.
4. " " Service.
5. Order of publication filed April 24, 1906.
6. Proof " " " May 22, 1906.
7. Affidavit of T. F. Robbins filed May 29, 1906.
8. Motion to file exhibit filed October 9, 1906.
9. Leave to amend Bill filed April 17, 1907.

10. Demurrer to Bill filed May 17, 1907.
11. Order sustaining Demurrer filed February 28, 1908.
12. Exhibits to Bill F to Z inclusive and A-1 to A-7 inclusive filed March 30, 1908.

401 13. Exhibits to Bill A-8 to A-12 inclusive filed June 15, 1908.

14. Exhibit to Bill A-13 filed September 10, 1908.
15. " " " A-14 " October 8, 1908.
16. Demurrer to Bill filed October 19, 1908.
17. Opinion of Justice Barnard filed December 16, 1908.
18. Decree filed December 28, 1908.
19. Memorandum of filing bond filed January 18, 1909.
20. Exhibit as per stipulation filed February 8, 1909.

WM. E. AMBROSE,
Attorney for Def'd't.

Order Extending Time for Filing Record, &c.

Filed February 26, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

KATE WILLARD BOYD ET AL.
vs.
JOSEPH PARKER CAMP.

Upon consideration of the motion of counsel for the defendant, it is this 26th day of February, A. D., 1909, by the Court ordered:

That the time within which the record may be filed in the Court of Appeals of the District of Columbia be and the same

402 hereby is extended to the 20th day of March, A. D., 1909.

It is further ordered that the Clerk of the Court shall be permitted to open the papers in Law cause No. 46756 for the purpose of making a certified copy of the abstract of title of William Redin filed therein to be incorporated in the above entitled cause.

By the Court:

JOB BARNARD, *Justice.*

Consent:
J. B. LARNER,
Sol. Compl't.

403 In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 402 both inclusive, to be a true and correct transcript of the record

according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 25974, in Equity, wherein Kate Willard Boyd *et al.* are Complainants and Joseph Parker Camp is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of March, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1999. Joseph Parker Camp, appellant, *vs.* Kate Willard Boyd *et al.* Court of Appeals, District of Columbia. Filed Mar. 19, 1909. Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 1999.

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD, HENRY K. WILLARD, AND GEORGE E. HOWE, DEVISEES IN TRUST UNDER THE LAST WILL OF CALEB C. WILLARD, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED APRIL 29, 1909.

In the Court of Appeals of the District of Columbia.

No. 1999.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD ET AL., Appellees.

Stipulation.

It is stipulated by and between counsel for appellant and appellees that the abstract of title of William Redin referred to in the stipulation filed in Equity cause No. 25974 on the 8th day of February, 1909, and hereunto annexed be incorporated in and made a part of the record in the above entitled cause.

WM. E. AMBROSE,
Attorney for Appellant.
JOHN B. LARNER,
Attorney for Appellees.

EXHIBIT B. F. I. No. 1.

At Law. No. 46756.

JOSEPH P. CAMP
vs.
CALEB C. WILLARD.

The title to part of lot No. 20, in sq. 254, sold as belonging to Wm. Dowling's heirs.

Lib. B. No. 2, p. 9.

In 1794 the lot belonged to Sam'l Blodgett, who, on the 28" Jan. '94, conveyed it, with other City lots, to Thos. Johnson and Thos. Peter, to secure the payment of the prizes which might be drawn in "the Hotel lottery," and to indemnify the City Commissioners.

Lib. G., 299.

Sam'l Blodgett to Edw'd Frethey, 14 Apr. 1801, lease for 99 years renewable forever, at an annual ground rent.

Ib., p. 306.

Edw'd Frethey to Fred'k Betz, assignment of that Lease, 19th Sept. 1801.

I., p. 325.

Fred'k Betz to Geo. Betz, assignm't of said lease, 24 Jan. 1803.

K. No. 10, p. 204.

Geo. Betz to John Thorp of Baltimore, assignment of said Lease, 15th Feb. 1804.

Chan. Rec., 1.

A Chancery suit was instituted by Rob't Bickley against said Blodgett, Peter, Frethey and others, to obtain the Hotel which had been drawn by Bickley, and also the payment of $26634. for other prizes found due to Bickley by Blodgett, and to have sold Blodgett's ground rents secured on City lots, and divers other City lots, for payment thereof; and Rob't Brent was appointed by the Court trustee. Johnson had died; and Thos. Peter was directed to join in the deeds with Brent to the purchasers. The decree is dated the 4th Oct. 1805.

Lib. S. No. 18, p. 1.

On the 15th Jan. 1807, said Brent, as trustee, sold and conveyed to Rob. F. Howe "all the right to the ground rent reserved by Blodgett by said lease, dated in 1801, which was in Blodgett previous to and at the time of making said decree; and all the right, title and interest therein which said Peter derived in and thereto by virtue

of said deed of 1794 referred to in said decree, or since that time through said Blodgett." And said Peter conveyed, "all the interest in said ground rent so reserved by said Blodgett which said Peter derived by virtue of said deed to him and Johnson or which he had since acquired through said Blodgett."

Lib. W. B. 36, 299.

The next deed I find on the records is in 1831, from Wm. Dowling to Rob't F. Howe. The lot had been sold for Corporation taxes on the 26th Feb'y 1826 to Auth'y Preston, who assigned the tax certificate to said Dowling, who obtained a deed from the Corporation. Dowling on the 30th May 1831 released and conveyed the lot to said Howe, "*saving the leasehold interest therein belonging to him,*" (Dowling.)

Copy Obtained from New Jersey.

Rob't F. Howe by his Will, dated 28th July 1830, signed in the presence of three witnesses, proved 4th June 1831, at Burlington, New Jersey, gave a number of legacies, and an annuity of 250$ a year to his sister Mary A. Imslee, and which he charged on his estate, and authorized his Executors to sell all his real estate for the purpose of paying said legacies and annuity. Three Executors were named, one of whom resigned.

W. B. 56, 449.

Deed from Sarah How and Edw'd P. Pearson, two of Rob. F. Howe's Executors, to Wm. Dowling, 18th July 1835.

It recites the deed from Brent and Peter to Rob't F. Howe of 1807; that the lot was then subject to a lease dated the 4th April 1801; it also recites the said Will of Rob. F. Howe, authorizing his Executors to sell his estate; that they had sold said lot on the 1st Nov'r *1834* to Wm. Dowling, who was then "in *possession* of said premises *under said lease* above mentioned;" and said Executors convey the lot to Dowling in fee by this deed.

Lib. J. A. S. No. 8, p. 444.

The next deed is from W. S. Cox to Smith & Naylor, 21 Sep. 1849.

That recites that Cox had purchased the lot at Marshal's sale under a judgment against Dowling—Judicials 192, Mar. 1836.

There is no return of the execution; nor does any deed appear on the records to Cox, as the foundation for this deed from him.

No. 35, p. 487.

Smith & Naylor to Wm. Dowling—29 Oct. 1851—deed of said lot for $1200.

No. 32, p. 154.

Dowling to Howard, 29 Oct. 1851—deed to secure the purchase money.

No. 46, p. 136.

Howard to Dowling, 5 Oct. 1852, release of the last mortgage.

15 Oct., 1852.

Wm. Dowling's Will—3 witnesses—he gave all his property to his son, Wm. Dowling, for life; and after his death to his heirs at law.

This devise gave Wm., the son, the fee in this lot.

Wm. Dowling, the son, died, leaving two daughters, one of whom is under age. Decree of the Court of this District, by consent, to sell the lot for the purpose of division between them.

It was under this decree that Mr. Isherwood purchased the lot.

Remarks.

There are two or three points for remark.

1. The lease, made in 1801, for 99 years, renewable forever. The last assignment I can find was to John Thorp of Baltimore, in 1804. I can find no assignment of it to Wm. Dowling. No doubt it was void against Thos. Peter as holding under the prior deed of 1794; but the parties do not seem so to have regarded it; Brent and Peter in 1807 sold to Howe only the ground, subject to the existing lease. The lease is recognized as existing in the deed made by Dowling in 1831, releasing the property from the tax sale, and as then belonging to Dowling, under the lease. So it is in the deed of 1835, from Howe's Executors to Dowling, which states "that Dowling was then in possession *under* said lease;" and, if he was so, the Lease would be merged in the fee by the conveyance of the fee then made to Dowling by Howe's Executors. The proper evidence of his holding under the lease would be an assignment thereof to him from Thorp; and, although I can find no assignment of the lease to Dowling, I cannot but think there must have been one, and that he had become the owner of the leasehold interest at the time Howe's Executors made the deed to him. He is represented to have been in possession more than 30 years. The last assignment of the lease is to John Thorp in 1804, more than sixty years since; and, I am informed by the Counsel for the heirs of Dowling, no known claim in that time by Thorp or his representatives. It is my duty to point out the absence of any assignment of the lease to Dowling; but you must judge as to the risk of disturbance.

2. The legacies charged by Rob't F. Howe's will on this lot, as well as on his other property, may safely at this day—near 34 years—be presumed to have been satisfied. The *annuity* to his sister of $250 a year is a continuing charge. That may still be an incumbrance; though from the fact of no claim having been made, as I am informed, the probability is, that the annuitant is dead, or that the annuity has been provided for out of some other of Mr. Howe's property.

3. The decree under which the sale was made is by *consent*. This could not be in the case of a minor; but she can confirm it when of

age, and should then execute a deed either to the trustee or the purchaser; and some security should be given that she shall do it as soon as she attains 21. I am informed she is within a year or so of the age.

4. I have examined the tax sales. This lot was several times sold for taxes; but always redeemed or settled.

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify that the annexed is a true copy of a Certificate of Title filed October 16, 1905, as an Exhibit to the Deposition (*de bene esse*) of Benjamin F. Isherwood, in Cause at Law No. 46576, entitled Joseph P. Camp *vs.* Caleb C. Willard, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of April A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1999. Joseph Parker Camp, appellant, *vs.* Kate Willard Boyd *et al.* Addition to Record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Apr. 29, 1909. Henry W. Hodges, Clerk.

Tuesday, February 1st, A. D. 1910.

No. 1999.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased.

The argument in the above entitled cause was commenced by Mr. W. E. Ambrose, attorney for the appellant.

Wednesday, February 2nd, A. D. 1910.

No. 1999.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased.

The argument in the above entitled cause was continued by Messrs. R. Ross Perry and Wm. F. Mattingly, attorneys for the appellees, and was concluded by Mr. W. E. Ambrose, attorney for the appellant.

On motion the appellant is allowed to file additional authorities herein if so advised.

In the Court of Appeals of the District of Columbia.

No. 1999.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased.

Opinion.

(Mr. Justice Robb delivered the opinion of the Court.)

This is an appeal from a decree of the Supreme Court of the District of Columbia enjoining appellant from the further prosecution of an action of ejectment, involving the title to original lot No. 20 in Square No. 254 in the City of Washington, instituted by him against the late Caleb C. Willard, under whose last will appellees were named as trustees and in that capacity herein appear.

Said lot was sold by the United States Commissioners to Samuel

Blodgett, Jr., but no conveyance was made to him, hence he acquired only an equitable fee simple interest. By a deed of trust dated Jan. 28th, 1794, duly recorded, Blodgett conveyed said lot to Thomas Johnson, Jr., and Thomas Peter in trust to secure said United States Commissioners from loss by reason of any default in the payment of prizes which might be drawn in a lottery then being conducted by said Blodgett and called the "Hotel Lottery." Subsequently, while said deed of trust was still in force, he demised this lot by the execution of three leases each for a term of 99 years, renewable forever, as follows: On April 13th, 1801, the east twenty feet fronting on F Street to James Daugherty. On April 14th, 1801, the west nineteen feet, eleven and one half inches, to Edward Frethey, and on April 28th, 1804, the middle eleven feet, eleven inches to Edward Fennell. In the Daugherty and Frethey leases an annual rental free of all taxes, etc., of forty dollars was stipulated, while the Fennell lease provided for an annual rental of twenty-four dollars. The Daugherty and Frethey leases contained a condition that upon payment by the lessee, his heirs or assigns, at any time or times during the continuance of that or any future demise, of the sum of five hundred dollars the grantor, his heirs or assigns, would execute a deed in fee simple of the demised premises to the lessee or his heirs or assigns. It was further agreed that any sum not less than one-tenth of said five hundred dollars might be paid at any time, and that so much in proportion of the rent should be lessened. In both the Daugherty and Frethey leases the lessee covenanted to "erect and build a good and substantial dwelling house" on the demised premises to be completed and tenanted during the course of the year. In the Fennell lease the lessee was entitled to a deed in fee simple upon the payment of three hundrd dollars.

On October 9th, 1802, Robert S. Bickley instituted an equity suit in the then Circuit Court of the District of Columbia against Blodgett, Thomas Peter, surviving trustee under said deed of trust, Thomas Monroe, Superintendent and Agent of the Affairs of the District of Columbia, and others praying that the property of said Blodgett in the District of Columbia be sold to satisfy a judgment for the sum of $21,500 and costs, which Bickley had obtained in Pennsylvania in a suit based upon the default of Blodgett in the payment of the prize to which Bickley was entitled as the holder of a ticket in said Hotel Lottery. This suit resulted in a decree dated October 4th, 1805, directing the payment of said judgment on or before a day certain, and that in default thereof the property of said Blodgett described in said decree and including certain squares and lots should be sold. It was further ordered and decreed that "certain ground rents reserved by the said defendant Blodgett by indenture made between the said Samuel Blodgett of the one part and Edward Frethey one of the defendants aforesaid of the other part bearing date on the 4th day of April, 1801, and certain other ground rents reserved by the said Samuel Blodgett by indenture made between the said Samuel Blodgett of the one part and James Daugherty one of the said defendants of the other part bearing date on the 13th day of April, 1801, be also sold for the purposes aforesaid." Blodgett

failed to comply with the order of payment and the trustee named in said decree advertised and sold all of said squares and lots "also several certain ground rents reserved by said Blodgett." The ground rent reserved under the Daugherty lease was sold to one Henry Pratt for three hundred and sixty dollars, and the ground rent under the Edward Frethey lease was sold to Robert Howe for four hundred dollars. The deed in each instance conveyed all the right, title, and interest of said Blodgett in said ground rents.

The proceeds of the sale under said decree of Oct. 4th, 1805, failed to liquidate the judgment and on May 28th, 1810, Bickley filed a supplemental bill praying the sale of certain other property "lately discovered" in satisfaction of said judgment. In this supplemental bill was included the ground rents reserved in the Fennell lease "and the reversionary interest of said Blodgett therein whatsoever the same may be." The decree directed the sale of "all interest, claim and right of said Blodgett of, in, and to said property." A different solicitor appeared for the petitioner in the prosecution of this supplemental bill. It is not disputed that the sale of the Fennell ground rent conveyed to the grantee whatever interest Blodgett had in the land covered thereby.

The purchaser of the Daugherty ground rent assigned his interest to said Bickley, to whom the trustee conveyed "all the right, title, and interest" of said Blodgett in said ground rent along with the other property by deed dated April 3rd, 1807, Thomas Peter, surviving trustee under the Blodgett deed of trust, and Thomas Monroe, superintendent, etc., joining in the conveyance. Bickley, on May 1st, 1813, for a consideration of four hundred dollars, conveyed said east twenty feet in fee simple to James Daugherty. The granting clause contains the following: "All that part of lot number twenty, in square number two hundred and fifty four, in the City of Washington fronting on F street north, twenty feet which said part of a lot and premises was heretofore to wit on or about the thirteenth day of April in the year eighteen hundred and one, leased on the conditions herein mentioned; by a certain Samuel Blodgett to the said James Daugherty and all the estate, interest and claim of the said Samuel Blodgett in and to the said part of a lot and premises, was afterwards sold and conveyed by Daniel C. Brent as trustee, under a decree of the said Circuit Court of the District of Columbia for the County of Washington to the said Robert S. Bickley which will fully appear, reference being had to the Land Records of the County of Washington, in the District of Columbia, together with the rights, privileges and appurtenances thereto belonging or in anywise appertaining." It thus appears that Daugherty, the leaseholder, became the owner of the ground rent.

On Jan. 15th, 1807, Brent and Peter conveyed to Robert F. Howe, the purchaser at said trustee's sale, "all the right, title and interest of, in and to the said ground rent reserved by the said Samuel Blodgett by indenture made between him and the said Edward Frethey." On July 18th, 1835, the leasehold and ground rent interests became merged.

By mesne conveyances the title conveyed under said decrees, to-

gether with the leasehold interests, became vested in one Benjamin F. Isherwood who, on May 4th, 1882, conveyed all of said lot in fee simple to Caleb C. Willard, complainant's testator.

The appellant Camp claims title to said lots by grant from the heirs of Blodgett of their supposed reversionary interest in said lot.

The prayers for relief are in the alternative. "If the court shall be of the opinion that under the mesne conveyances and proceedings hereinbefore set forth the complainants have derived and are now vested with all the right, title and interest which the said Samuel Blodgett had to the lot in question" the court will grant a writ of injunction enjoining said defendant from the further prosecution of said ejectment cause. If, on the other hand, the court "should be of the opinion that the complainants did not derive under said mesne conveyances and proceedings hereinbefore set forth, and are not now possessed through the same, of all the right, title and interest to the estate which the said Blodgett owned in said lot, and should further be of the opinion that the defendant is vested with the reversion in fee as assignee of the heirs of the said Blodgett, then that the Court will decree that the said defendant renew the said leases to the complainants for a period of 99 years, renewable forever," etc.

To the bill of complaint the defendant filed a demurrer, contending therein that the bill does not set forth such a case as entitles complainants to the relief sought, that complainants have a complete remedy at law, and that the court is without jurisdiction in the premises.

First, appellant here insists that no case is presented "which calls for the intervention of an equity court." To sustain this contention it must appear that appellees have a full and complete remedy at law. As to the Daugherty and Frethey leases, under one view of the case, it will be readily seen that complainants would be without adequate remedy in a court of law. If the first proposition contended for by complainants should be sustained, namely, that the sale of the Daugherty and Frethey ground rents extinguished all of Blodgett's interest in the parcels of land covered thereby, complainant's remedy in a court of law would probably be adequate. If, on the other hand, it should be held that such sale did not extinguish Blodgett's reversionary interest in said parcels, it is apparent, the 99 year terms having ended without renewal, that it would require the intervention of a court of equity to afford relief. Banks vs. Haskie, 45 Md. 207; Kilbourn vs. Sunderland, 130 U. S. 514. As to the Fennell tract, while the remedy at law would appear to be adequate, there is no apparent reason why a court of equity, having assumed jurisdiction as to the other two tracts mentioned in defendant's action of ejectment, all three tracts having been included in said action, should not dispose of the whole case and thus end the litigation.

Coming to the merits of the case the interesting question is presented as to the meaning of the term "ground rents" as employed in said decree and the conveyances by the trustee thereunder, it being contended on the one hand that ground rents as thus employed

conveyed to the grantees Blodgett's right in perpetuity to receive rent under said leases, and hence that such conveyances really extinguished all of Blodgett's interest in said parcels of land, and on the other hand that all that was sold and conveyed was Blodgett's right to receive rents during the 99 year terms and that the privilege of renewal not having been exercised within those terms Camp, as the grantee of the heirs of Blodgett, is entitled to possession.

Leases of this character were very common in Maryland in Colonial times. We therefore, in the absence of authority in our own jurisdiction, resort to the adjudged cases in that jurisdiction in our effort to find a solution of the question in issue. In Banks vs. Haskie, 45 Md. 207, the question was whether the owner of the leasehold interest not having exercised the right of renewal within the 99 years was entitled, as against the owner of the fee, to enforce specific execution of the renewal covenant. Decree for complainant. The court found that the intention of the lessor in the execution of such a conveyance was to secure prompt payment in perpetuity of the interest on a sum of money equal to the value of the property in fee at the time of the execution of the lease, and that the intention of the lessee was to acquire a perpetual interest in the premises which would justify him in making improvements on the property and treating it in other respects as his own. In that lease, as in the Daugherty and Frethey leases, there was a covenant requiring the lessee to improve the premises by erecting a building thereon. This the court found to be evidence of the permanent character of the tenure. After stating that courts should so treat and construe such a lease as most effectually to carry out the intent of the parties, the court said: "This character of tenure is, so far as we know, among the States peculiar to Maryland. It has not been generally adopted so far as we are informed in any other State. It was introduced here in Colonial times, and has been a favorite system of tenure from a very early period. A large city has been built, and improved, and a vast majority of the real estate in Baltimore is now held under it. It is not open to any of the objections against perpetuities. Property is not thereby placed extra commercium. On the contrary, these leasehold interests devolve upon the personal representatives of the owner, are in terms made assignable, and they, as well as the ownerships in fee under the denomination of "ground rents" are subjects of daily transfer, and are constantly sought for as safe investments of capital. It is a peculiar description of tenure which has been sustained by our courts, and approved and fostered by our people. While the ground rents from their nature are usually of a fixed value, the leasehold interests are more or less fluctuating."

In Ogle vs. Reynolds, 75 Md. 145, the testatrix bequeathed "four several ground-rents," payable out of a certain lot, to defray her funeral expenses and to erect monuments to her parents, her husband, and herself. All her other property, both real and personal, passed under her will. The court ruled that the reversion or fee passed under the will, and in the course of the opinion said: "Primarily 'ground rents' mean, it is true, the rent payable to the

lessor, but at the same time it must be conceded, that the reversionary interest in the lots thus leased is generally designated and known as 'Ground rents.'"

Jones vs. Rose, 96 Md. 483, is the latest decision of the Maryland Court of Appeals upon this subject. In that case the owner of land which was subject to an old ground rent joined in a deed of partition charging the rent upon one part and exonerating the remainder of the land therefrom. Subsequently one of the parties to this deed acquired the outstanding ground rent and conveyed the same to certain of the other parties to the deed of partition. These grantees thereupon executed a deed conveying the rent to the owners of the lot upon which it had been charged in said deed of partition. Thereafter the owner of one of the lots which had been exonerated from the rent, not having received a grant of the reversion, sold said lot as fee simple. The purchaser objected to taking the title as being technically leasehold, whereupon the vendor filed a bill specifically to enforce the contract. It was held that the parties to the deed of partition and those claiming under them were estopped to deny that the rent had been apportioned, and that since the same parties afterwards acquired the ground rent, they and their privies were likewise estopped to claim that the rent was collectible from that part of the land which had been exonerated therefrom; and that moreover the execution of the deed conveying the ground rent extinguished the rent. In closing its opinion the court said: "All the property except lots 19, 20, and 21 had already been exonerated from the burden of the ground rent by virtue of the estoppel, above adverted to, and, therefore, it became necessary only to release the owner of these three lots if the rent was intended to be wholly extinguished. When the owner of those lots was released by the deed of 1857 the original rent was completely destroyed and lot No. 4 was then, if not before, held in fee." In that case, it will be observed, the court found the title to the lot which had been exonerated from the rent to be in fee simple, notwithstanding that the naked reversion had never become vested in the holder of the title. In other words, it sustained the proposition that the extinguishment of the ground rent likewise destroys the reversion if, of course, such intent is manifest from the surrounding circumstances.

It is apparent from an examination of the preceding cases that the term "ground rent" in Maryland has, since Colonial times, possessed a peculiar and comprehensive significance. This fact ought to be controlling in this case because the property affected by this decision was, just prior to the conveyance of the "ground rent" herein involved, a part of the State of Maryland, and said demises were undoubtedly made with reference to the then signification of the above term. In the light of these observations let us briefly review the conditions existing when the sale of the Frethey and Daugherty ground rents took place. Blodgett, as the holder of the equitable fee simple title, had conveyed the lot composing the Frethey, Fennell, and Daugherty parcels by deed in trust for the express purpose of securing the United States Commissioners from loss by reason of said Hotel Lottery. In apparent conflict with this deed of trust he executed the three leases to Frethey, Fennell, and

Daugherty, respectively. A default occurred in the payment of a prize to which Bickley was entitled as the holder of a successful ticket in said lottery, and Blodgett's property, or so much of it as could then be found, was sold to satisfy the judgment obtained by Bickley. It is manifest that the court had jurisdiction to decree a sale of all of Blodgett's interest in the two parcels involved in the first sale. Is it to be presumed that the court, having jurisdiction to decree the sale of all of Blodgett's interest in said parcels, decreed the sale of only a part of said interest, notwithstanding that there still remained a substantial amount due from Blodgett to Bickley? Is it not more reasonable to assume that the Court in decreeing the sale of these "ground rents" intended to encompass the sale of Blodgett's entire interest in the parcels? In other words, are we not justified in the assumption that the court was cognizant of the significance of the term ground rents in this jurisdiction and, in using the term, intended to extinguish Blodgett's entire interest in the Daugherty and Frethey parcels? To be sure, when the supplemental bill was filed the reversionary interest of Blodgett in the Fennell parcel was expressly mentioned, but this addition is probably to be attributed to the caution of the solicitor who prepared that bill. The court in its decree was dealing with leases renewable forever. Such leases in Maryland have been regarded as being practically in perpetuity. Banks vs. Haskie, 40 Md. 207. Is it strange, therefore, that in a jurisdiction where so many leases of this character existed the term "ground rents" should have come to include, in cases where the surrounding circumstances indicated such an intent, the reversion? No effort was made to disturb either Daugherty or Frethey in the possession and enjoyment of their leasehold interests. Neither did the court decree an assignment of the leases by Blodgett to the purchasers under the trustee's sale. It apparently intended to do more than that and used the term "ground rents" in its accepted signification for the purpose of extinguishing Blodgett's interest.

We therefore agree with the learned trial justice that the extinguishment of the ground rents exhausted the rights of the reversioner and that when the ground rents and the leasehold interests became merged the merger carried with it the fee. We more readily adopt the reasoning and conclusion of the Maryland authorities on this question because of the extreme technicality of appellant's contention. When these rents were sold and conveyed it was undoubtedly intended to lay hold of and extinguish all of Blodgett's interest in the property mentioned. Appellant's claim is therefore based upon an allegel omission rather than upon any just or equitable foundation.

The decree is affirmed with costs.

Affirmed.

Tuesday, May 10th, A. D. 1910.

No. 1999. April Term, 1910.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE ROBB,
May 10, 1910.

Friday, May 13th, A. D. 1910.

No. 1999.

JOSEPH PARKER CAMP, Appellant,
vs.
KATE WILLARD BOYD, HENRY K. WILLARD, and GEORGE E. HOWE, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased.

On motion of Mr. John Ridout, on behalf of counsel for the appellant in the above entitled cause, It is ordered by the Court that said appellant be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

(*Bond on Appeal*)

Know all men by these presents, That we, Joseph Parker Camp, as principal, and American Bonding Company of Baltimore, as surety, are held and firmly bound unto Kate Willard Boyd, Henry K. Willard and George E. Howe, devisees in trust under the last will of Caleb C. Willard, deceased, in the full and just sum of Three Hundred 00/100 dollars, to be paid to the said Kate Willard Boyd, Henry K. Willard and George E. Howe, devisees in trust under the last will of Caleb C. Willard, deceased, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twentieth day of May, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Joseph Parker Camp and Kate Willard Boyd, Henry K. Willard and George E. Howe, devisees in trust under the last will of Caleb C. Willard, deceased, a decree was rendered against the said Joseph Parker Camp and the said Joseph Parker Camp, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Kate Willard Boyd, Henry K. Willard and George E. Howe, devisees in trust under the last will of Caleb C. Willard, deceased, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Joseph Parker Camp shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH PARKER CAMP. [SEAL.]
AMERICAN BONDING COMPANY
OF BALTIMORE, [SEAL.]
By THOS. J. DE LASHMUTT, [SEAL.]
Attorney-in-Fact.

[Seal of American Bonding Co. of Baltimore.]

Sealed and delivered in presence of—
THEODORE BLOCK,
As to Principal.
ALBERT W. WILLETT,
As to Surety.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals
of the District of Columbia.

[Endorsed:] No. 1999. Joseph Parker Camp, Appellant, vs. Kate Willard Boyd, et al. Bond for costs on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed May 31, 1910. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Kate Willard Boyd, Henry K. Willard, and George E. Howe, Devisees in Trust under the Last Will of Caleb C. Willard, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Joseph Parker Camp is appellant and you are appellees, to show cause, if any there be, why the decree rendered

against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 31st day of May, in the year of our Lord one thousand nine hundred and ten.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted May 31, 1910.

R. ROSS PERRY & SON,
Counsel for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 31, 1910. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

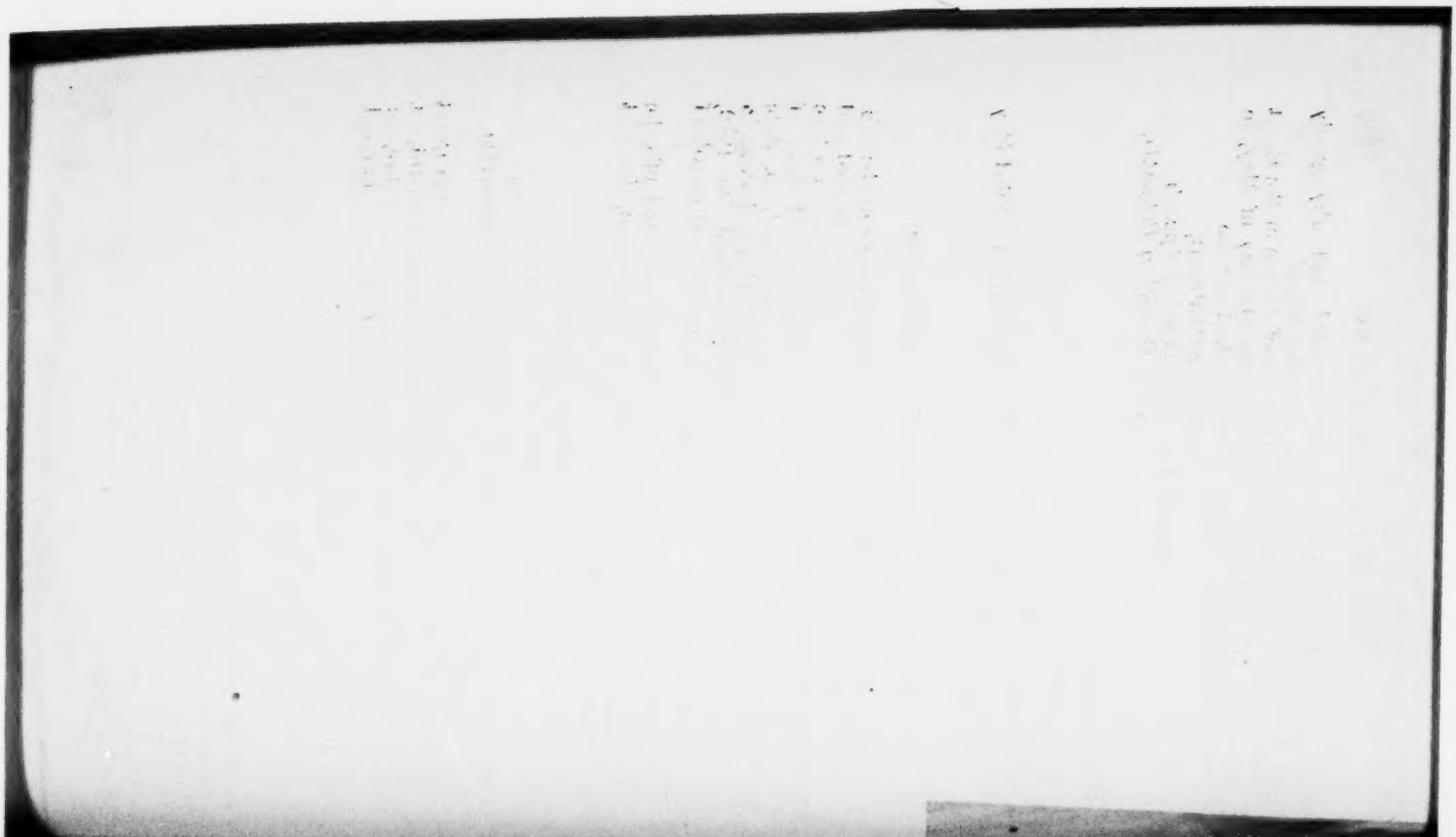
I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 240 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Joseph Parker Camp, appellant, vs. Kate Willard Boyd, Henry K. Willard and George E. Howe, devisees in trust under the last will of Caleb C. Willard, deceased, No. 1999, April Term, 1910, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 31st day of May, A. D. 1910.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 22,214. District of Columbia Court of Appeals. Term No. 593. Joseph Parker Camp, appellant, vs. Kate Willard Boyd, Henry K. Willard and George E. Howe, devisees in trust under the last will of Caleb C. Willard, deceased. Filed June 6th, 1910. File No. 22,214.



White Supreme Court, U. S.
FILED.
JAN 20 1913
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

Term No. 71.

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD, HENRY K. WILLARD, AND GEORGE E. HOWE, DEVISEES IN TRUST UNDER THE LAST WILL OF CALEB C. WILLARD, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

HUGH T. TAGGART,
WM. E. AMBROSE,
Attorneys for Appellant.

THE LAW REPORTER PRINTING CO., WASHINGTON, D. C.

INDEX.

Page.

Statement of the Case 1

Question presented by the record is whether a case of equitable cognizance is stated in the bill of complaint of appellees 1

Averments of the Bill of Complaint:

That equitable ownership in fee of three several parts of lot 20 in square 254, designated, respectively, as Parcels A, B, and C, was vested in C. C. Willard at time of his death, and is now vested in complainants (appellees), his devisees, by virtue of mesne conveyances and proceedings deriving title from Samuel Blodget, deceased 1, 2

That equitable ownership of said parts of said lot is claimed by defendant (appellant) to be vested in him as assignee of said Blodget's heirs 2

That defendant instituted an action of ejectment to recover said lot against said Willard in his lifetime, which action is still pending and undetermined 2

Complainants seek by bill to obtain relief in respect of such assertion of title by defendant 2

Demurrer interposed to bill overruled and defendant electing to stand on his demurrer, court passed final decree from which defendant appealed 2

Instruments of title and proceedings referred to in bill, relied upon by complainants in support of their claim of title stated and their import considered 3

Page.

1. Burnes' conveyance of his lands in trust for a Federal City, dated June 28, 1791.... 3
2. Division on October 5, 1792, of lots in square 254, between Burnes and Commissioners appointed under act of Congress of July 16, 1790. Purchase of lot by Blodget..... 3
3. Deed of his lands in Territory of Columbia from Blodget to Peter and Johnson in trust to secure lottery prizes..... 5
4. Blodget's leases to Daugherty, Frethy, and Fennell for ninety-nine years for the parts of said lot, Parcels A, B, and C, dated respectively April 13 and April 14, 1801, and April 20, 1804..... 6
5. Record in equity suit of Bickley *vs.* Blodget et al., to enforce debt of Blodget to Bickley growing out of lottery..... 7
6. Decree of October 4, 1805, passed on original bill for sales among other property of Blodget, of the "ground rents" reserved on the Daugherty and Frethy leases (Parcels A and B), and appointing Brent, trustee..... 8, 9
7. Legal title to lot 20 outstanding in Beall and Gantt, trustees, under Burnes' deed..9, 10
8. Report of sales by Brent, trustee, showing that the "ground rents" under the Daugherty lease (Parcel A) and other property were sold to Pratt and Budd who assigned their purchases to R. S. Bickley; and showing that "ground rents" under Frethy lease (Parcel B) were sold to Robert F. Howe..... 11

Page.

9. Deed to Bickley from Brent, trustee, under the decree for the "ground rents" under the Daugherty lease (Parcel A), dated April 3, 1807 11–14

10. Deed from Brent, trustee, under the decree for the "ground rents" under the Frethy lease (Parcel B), dated January 15, 1807 14–16

11. Other deeds and proceedings affecting Parcel A, the part of lot leased to Daugherty 16, 17

12. Other deeds and proceedings affecting Parcel B, part of lot leased to Frethy 17-20

The Fennell lease for Parcel C and appellant's contention in regard thereto 20-23, 28

Contentions of respective parties as to Parcels A and B stated 28

Prayers of the Bill 28

Decree overruling demurrer and final decree perpetually enjoining defendant from further prosecution of his action of ejectment and granting other relief and appeal from same 29

Assignment of Errors 29-31

Argument 31

Appellant's right to maintain his ejectment under the provisions of the District Code and the decision of this court in Oelrichs *vs.* Spain, 15 Wall., 211, 227, considered. 32, 34

The theory of the Bill of Complaint 34-35

No title whatever, either legal or equitable in complainants to Parcels A and B, shown by the bill 35

The legal title to Parcels A and B 35-36

The equitable title to Parcels A and B 36-41

Page.

Appellees' contention of equitable title to Parcels A and B based on three erroneous assumptions. 41-43

Severance of the rents from the reversion.....43-45

The deeds of the parties owning the leasehold interests and the right to rents, although in form of deeds in fee transferred only chattel interests.....45, 48-49

Contentions of appellees, Nos. 1, 2, 3, shown to be unfounded 23, 47, 48

Contention No. 4 of appellees considered and shown to be immaterial 23, 48-49

Doctrine in regard to forfeitures stated. Landlord may overlook them.....49-50

Contentions Nos. 5 and 6 of appellees considered and shown to be immaterial 24, 50-54

Land records were conclusive notice to Willard that a fee simple title was not in Isherwood, his grantor, to Parcels A and B answering statement of appelles' seventh contention.....24-25, 54-58

Contention No. 8, paragraph A, of appellees considered and refuted 25, 58-59

Appellees not entitled to exercise the options for renewal or for purchase given by the Daugherty and Frethy leases as claimed in paragraphs B, C, and D of appellees' eighth contention. The options not having been exercised ceased with the expiration of the leases.....25-26, 59-66

The question of laches considered.....66-69

The bill of complaint considered as a bill for specific performance.....69-71

The decision in Banks *vs.* Haskie, 45 Md., 207, considered and shown to be contrary to the law as understood at the time of the cession of the District to the United States and at time of execution of leases to Daugherty and Frethy.....71-73

Conclusion.....73-75

Alphabetical List of All Cases Referred to.

	Page.
Banks *vs.* Haskie	71
Barrow *vs.* Isaacs (citing Hall *vs.* Barclay, Beauchamp *vs.* Winn)	68
Benedict *vs.* Lynch	62
Bickley *vs.* Blodget et al	7, 9, 22, 39, 41, 42
Codding *vs.* Wamsley (citing Story's Eq. Jur.)	65, 66
Clark *vs.* Jones	49
Coleman *vs.* Applegarth	64
Doe d. Bryan *vs.* Banks	49
Duke of Beaufort *vs.* Neeld	57
Geoffroy *vs.* Riggs	73
Hipwell *vs.* Knight	62
Johnson *vs.* Van Wyck	74
Lloyd *vs.* Collet	62
Morris *vs.* United States (citing Brown *vs.* Kennedy, Ould *vs.* Washington Hospital, Russell *vs.* Allen, De Vaughn *vs.* Hutchinson	73
Myers *vs.* Silljacks (citing Butler *vs.* Port Arlington)	55, 72
Oelrichs *vs.* Spain	33
Renound *vs.* Daskam	67
Thiebaud *vs.* Bank (citing Platt on Leases)	69
Waterman *vs.* Banks (citing Hepburn *vs.* Dunlop)	63

Alphabetical List of Other Authorities Referred to.

American and English Enc. of Law	62
Brooms Maxims	44
Cadwalader, Law of Ground Rents in Pennsylvania	70
Frye on Specific Performance	63, 66
Jones, Landlord and Tenant	49
Martindale on Conveyancing	39

Page.

Mayer, Ground Rents in Maryland 70
Paige on Contracts 63
Parsons on Contracts 62
Shepherds Touchstones 44
Taylor, Landlord and Tenant 44, 45
Tiffany, Landlord and Tenant 44
Wade on the Law of Notice 55, 66
Washburn on Real Property 18, 44, 48, 49, 62

Warvelle on Eject., secs. 115, 116, 459–462. 49

Pomeroy, Spec. Perf., sec. 387. 66
Pomeroy, Eq. Jur., sec. 807. 66

IN THE

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OCTOBER TERM, 1912.

Term No. 71.

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD, HENRY K. WILLARD, AND GEORGE E. HOWE, DEVISEES IN TRUST UNDER THE LAST WILL OF CALEB C. WILLARD, DECEASED.

BRIEF FOR APPELLANT.

Statement.

The record in this appeal presents the question, whether or not a case, within the cognizance of a court of equity, is stated in a bill of complaint filed on January 22, 1906, in the Supreme Court of the District of Columbia, by appellees, as devisees in trust under the last will of Caleb C. Willard, deceased, against appellant, as party defendant (Rec., p. 1, *et seq.*).

It is averred in the bill, among other things, that under and by virtue of mesne conveyances and proceedings, deriving title from Samuel Blodget as the original source, the equitable ownership in fee simple of each of three several parts of lot 20 in square 254, in the city of Washington, which was formerly vested in said Blodget, had become vested in said Willard,

and was vested in him at the time of his death; and that under said Willard's last will said equitable ownership of said Blodget had become and was vested in complainants. (Bill, pars. 4, 6, Rec., pp. 2, 3.)

The said parts of said lot are each described in the bill and designated, respectively, as parcels A, B, and C, and together constitute the entire lot.

The bill further avers that the defendant (appellant) claims that the equitable title of said Blodget to said lot had become and was vested in him, said defendant, as assignee of said Blodget's heirs and that said defendant had instituted an action of ejectment in the Supreme Court of the District of Columbia on its law side against said Willard, in the latter's lifetime, for the recovery of said lot, which action was still pending and undetermined. The complainants seek by the bill to obtain relief in respect of such assertion of title by the defendant.

The bill was subsequently amended by the filing, as exhibits thereto, of copies of the several mesne conveyances and proceedings referred to therein, and relied upon by the complainants in support of their claim to such ownership in fee simple of said lot.

The defendant interposed a demurrer to said bill as amended, assigning as grounds for the same, that it did not state a case which entitled the complainants to the relief prayed for in it; that the complainants had a complete and adequate remedy at law, and that the said Supreme Court of the District was without jurisdiction in the premises (Rec., p. 210).

The demurrer was overruled by the court and the defendant electing to stand upon the same, the court passed a final decree from which defendant appealed to the Court of Appeals of the District of Columbia; and from the decree of the Court of Appeals affirming the decree of the Supreme Court of the District, defendant appealed to this court.

If the grounds assigned in support of the demurrer are well founded, as appellant believes them to be, the decrees of both of the courts below are erroneous, and whether they are erroneous or not depends upon the true import, legal and equitable, of the instruments of title which are referred to in the bill of complaint, and upon such other facts as are well pleaded in it. The said instruments of title, as counsel for appellant humbly conceive, have been misconstrued by both of said courts.

The instruments of title are matters of record, and the substance and effect of each of them, in their order, briefly stated are as follows:

1. Conveyance of His Lands by David Burnes in Trust for a Federal City.

The first is a deed from David Burnes to Thomas Beall of George and John Mackall Gantt, dated June 28, 1791 (Exh. A14, Rec., p. 197).

By this deed all the lands of the grantor within certain defined limits were conveyed to the grantees and the survivor of them, and the heirs of such survivor in trust for certain purposes having relation to the laying out of a "Federal City" on the lands conveyed, and other lands within said limits. The trusts provided that the city should be laid out according to such plan as the President shall deem proper; that the streets and such squares, parcels, and lots as the President shall deem proper for the use of the United States shall be conveyed by the trustees to the Commissioners appointed under the act of Congress (of July 16, 1790, 1 Stat., 130), entitled "An act for establishing the temporary and permanent seat of the Government of the United States," and their successors; that as to the residue of the lots which shall be laid out upon the lands of the grantor, a fair and equal division of them to be agreed upon by said Burnes and said Commissioners, shall be made, and that all of

the lots assigned to Burnes, upon such division, shall be conveyed by the trustees to the said Burnes, his heirs and assigns, and that the others of said lots shall and may be sold on such terms and conditions as the President of the United States, for the time being, shall approve; that the proceeds of such sales shall, in the first place, be applied to the payment in money for the lots and squares appropriated to the use of the United States, and that the residue of such proceeds should be delivered to the President as a grant of money to be applied for the purposes of and according to said act of Congress. The deed provides that because it may happen that, by deaths or removals, difficulties may occur in the execution of said trusts, the trustees or trustee, for the time being, will convey the said lands to such person or persons as the President may appoint, in fee, subject to the trusts then remaining to be executed.

The act of Congress of July 16, 1790, referred to in the deed, provided for three things, viz, (1) the appointment of three commissioners by the President, who shall, under his direction, survey, define, and limit the Federal District; (2) the acquisition by gift or purchase of such quantity of land in said District as the President shall deem proper for the use of the United States; (3) the erection by the Commissioners, under the supervision of the President, of such buildings as may be necessary for the accommodation of the offices of the Government.

The act made no appropriation to enable the President and the Commissioners to carry its provisions into effect. Their available funds for the purpose consisted of $72,000, advanced by the State of Maryland, and of $120,000, advanced by the State of Virginia, and of such sums as were realized from the sale of lots under the deeds executed by Burnes and other proprietors.

In the Maryland act of December 19, 1791, entitled

"An act concerning the Territory of Columbia and the City of Washington," the execution of the deeds by the proprietors is recited and by its eleventh section an advance of $72,000 to the President is directed to be made.

2. Division of Lots in Square 254 Between Burnes and the Commissioners.

The next instrument is an agreement between Burnes and the Commissioners, dated October 5, 1792, by which a division was effected between them agreeably to his deed to Beall and Gantt of the lots in square 254, one of the squares of the city, laid out upon his land. A plat of the square is attached to the agreement. By this agreement certain lots in the square were assigned to Burnes, as original proprietor, and the remaining lots in the square, including lot 20, "are to be subject to be sold agreeable to the deeds in trust concerning the lands in the said city" (Exh. A10 and A11, Rec., between pp. 110 and 111).

The said lot 20 in square 254 was purchased by said Blodget from the Commissioners on October 8, 1792, and paid for by him, but no certificate of such purchase and payment was delivered to him by them, nor did he obtain a deed for the lot from Beall and Gantt, trustees under the deed from Burnes.

3. Deed of His Lands from Blodget to Peter and Johnson in Trust to Secure Lottery Prizes.

The next instrument is a deed from Samuel Blodget to Thomas Peter and Thomas Johnson, Jr., dated January 28, 1794 (Exh. 3, Rec., p. 25).

By this deed grantor conveys to grantees and their heirs all his real estate and property in the Territory of Columbia to secure the payment of the prizes in a certain lottery called the Hotel Lottery, and all

sums of money with which he may become chargeable on account of said lottery, and for the indemnity of the Commissioners against all costs, damages, and charges, on account of said lottery, by reason of any act or transaction of him, said Blodget, with a proviso that if the said Blodget shall satisfy said obligations the deed shall become and be void.

4. Blodget's Leases for Parts of the Lot.

Next are three leases executed by said Blodget, each for a term of ninety-nine years. By one of them, dated April 13, 1801, the west 20 feet front of said lot 20, by its depth, being the part of said lot which is included in said parcel A is demised to James Daugherty at a reserved rent to be paid annually during the term (Exh. B, Rec., p. 18). By another, dated April 14, 1801, the east 19 feet 11 inches front of said lot 20, by its depth, being the part of said lot which is included in said parcel B is demised in like manner to Edward Frethy (Exh. C, Rec., p. 20). By the remaining lease, dated April 20, 1804, and executed in lieu of a previous lease between the parties, dated April 16, 1801, and which had not been recorded within the time limited by law, the middle 11 feet 11 inches front of said lot, by its depth, being the part of said lot included in said parcel C, is demised to Edward Fennell, in like manner, his term to run from said April 16, 1801 (Exh. D, Rec., p. 23).

Each of these leases contains a provision that the term granted is to be "renewable forever," and also contains a covenant by the lessor for the conveyance of the ground to the lessee, his heirs and assigns, at any time "during the present or future demise," upon the payment of a sum stated. The terms of each of the leases expired in April, 1900, by their own limitation, without the exercise by the tenants under them, either of the option for a renewal or of the option for the purchase of the ground, given to the lessees and their successors in interest.

5. Record in the Equity Suit of Bickley vs. Blodget et al.

Next is the record of a suit in equity instituted on October 9, 1802, in the Circuit Court of the District of Columbia, by Robert S. Bickley against Thomas Peter, surviving trustee under the above deed from Blodget to said Peter and Thomas Johnson, Jr., and against James Daugherty and Edward Frethy to whom Blodget had executed the leases above mentioned and against Thomas Monroe, superintendent of the city, who had succeeded to the powers and duties of the Commissioners, and against the said Blodget and others (Exh. A12, Rec., pp. 110 *et seq.*).

The bill avers the publication of the plan of a lottery by Samuel Blodget as the agent of the Commissioners; that said Bickley relying upon the plan purchased a ticket and paid for the same; that Blodget by deed dated January 28, 1794, conveyed to Thomas Johnson, Jr., since deceased, and Thomas Peter, who survived him, all his, the said Blodget's, real estate and property in the Territory of Columbia, upon condition that the deed should be void if the said Blodget should pay all the prizes and satisfy the other obligations mentioned in the deed; that the ticket purchased by him, said Bickley, drew as a prize "The Superb Hotel" to cost $50,000 referred to in the plan of the lottery; that the hotel had not been finished and delivered to him, said Bickley, as promised in said plan, that in a suit instituted by said Bickley against said Blodget, in Philadelphia, it was determined that said Blodget should convey to said Bickley in fee simple, the hotel and lots of ground thereto belonging, and moreover should pay said Bickley the sum of $21,500.

The bill mentions specifically a great number of lots and squares in the city of Washington, belonging to said Blodget, which were conveyed by the said deed to said Johnson, Jr., and Peter, and sets forth the fact that

Blodget had bought several other lots, which are mentioned, and among them lot 20 in square 254, from the Commissioners, and had paid the purchase money for the same, but for which a certificate of such purchase and payment was not delivered to him by the Commissioners, whose functions had devolved upon the defendant Monroe, as superintendent of the city. The bill sets forth that by two deeds, dated on the 13th and 14th of April, 1801, respectively, one of them to James Daugherty and the other to Edward Frethy, said Blodget had leased to each of them a part of said lot 20 in square 254, and prays they may be made parties, and that the titles of said Daugherty and Frethy under said leases "may be decreed against and determined of no validity," and that the property mentioned, or so much thereof as may be necessary, be sold to pay and satisfy the debt due to him, said Bickley.

James Daugherty was not served with process. Frethy answered, stating that all his interest under the lease had been assigned to Frederick Betz (Rec., pp. 155-156). Betz was not made a party to the suit.

6. Decree of October 4, 1805, Passed on the Original Bill in the Suit of Bickley vs. Blodget et al., and Proceedings Under Said Decree.

Two decrees were passed by the court, one dated October 1, 1804, which directed that certain lots in square 430 (on which the hotel stood), should be conveyed to Bickley. By the other, dated October 4, 1805, the court directed that in case Blodget did not pay the amount due Bickley within a specified time, numerous lots and squares mentioned in the decree should be sold for the payment of the debt; and it was further directed (Rec., p. 162, bottom of page)—

> "that certain ground rents reserved by the said defendant, Blodget, by indenture made between the said Samuel Blodget of the one part and

> Edward Frethy, one of the defendants aforesaid, of the other part, bearing date on the 4th (14th) day of April, 1801, and certain other ground rents reserved by the said Samuel Blodget by indenture made between the said Samuel Blodget of the one part and James Daugherty, one of the said defendants, of the other part, bearing date on the 13th day of April, 1801, be also sold for the purpose aforesaid."

Lot No. 20 in square No. 254, is not mentioned tioned in the decree.

Daniel Carroll Brent was appointed by the decree as trustee to make the sales of the lots and squares and of the "ground rents" mentioned in the decree. The decree directed that the defendant, Thomas Peter, should at the request of the trustee, join in and become party "in and to all the deeds by the said trustee in virtue of this decree to be executed;" and further directed that in all cases of deeds to be executed by the trustee—

> "in virtue of the decree for property, where the *outstanding legal title* now remains in the said Thomas Monroe as superintendent of the city of Washington, he, the said Thomas Monroe, as such superintendent, shall at the request of the said trustee join in and become a party to such deed" (Rec., p. 164).

7. Legal Title to Lot 20 Outstanding in Beall and Gantt, Trustees, Under the Deed From Burnes to Them.

It may be here stated that "the outstanding legal title" to any of the lots in the city was not in said Thomas Monroe as such superintendent, nor was it in the Commissioners whose functions, powers, and duties were devolved upon a superintendent by the act of Congress approved May 1, 1802 (2 Stats., 175), by which the Board of Commissioners was abolished, and provision was made for the appointment of a superintendent, nor in the United States. By the conveyance from

David Burnes to Beall and Gantt in trust of the land upon which lot 20 in square 254 was laid out the legal title had passed to them and was held, under the trusts declared in that deed, for an order of the President to convey the lot to whoever might purchase it from the Commissioners, and no such conveyance of the lot had been made by them. The Maryland act of December 28, 1793, provided—

> "that the cetificates granted, or which may be granted by the said Commissioners, or any two of them to purchasers of lots in said city with acknowledgment of the payment of the whole of the purchase money, and interest, if any shall have arisen thereon, and recorded agreeably to the directions of the act concerning the Territory of Columbia and the city of Washington, shall be sufficient and effectual to vest the legal title in the purchasers, their heirs and assigns, according to the import of such certificates, *without* any deed or formal conveyance."

This would seem to leave the legal title in said trustees, in cases of lots where no such certificate had been given by the Commissioners, or deeds executed by the trustees.

8. Report of Sales by Daniel Carroll Brent, Trustee.

In the advertisement of Brent, trustee, for the sale of properties under the decree, numerous lots and squares are specifically mentioned, but lot 20 in square 254 is not among them. After enumerating specifically the lots and squares to be sold, the advertisement proceeds "also several certain *ground rents* reserved by said Blodget amounting in the whole to $80 per annum" (Rec., p. 168).

In the trustee's report of sales he states that at the time and place appointed he sold at public auction, agreeably to the decree "all the property and *ground*

rents therein and thereby, directed to be sold" (Rec., p. 172). And he filed with his report "a particular list of the purchasers and of their indorsers, and of the property and *ground rents* sold, together with copies of his advertisement of sale."

In the list referred to is the item "*ground rent* on James Daugherty's lease, $360," of which Henry Pratt is stated to have been the purchaser, and the further item "*ground rent* on Edward Frethy's lease, $400," of which Robert F. Howe is stated to have been the purchaser (Rec., p. 159).

The trustee's report of sales was ratified nisi on January 25, 1806, and was finally ratified and confirmed by the court on June 25, 1806 (Rec., pp. 168, 173). Lot 20 in square 254 is not mentioned in the report.

Henry Pratt and George Budd appear by the report of the trustee to have been the purchasers individually of nearly all the property sold. They assigned their purchases from the trustee "of sundry squares, lots, and portions of ground and *ground rents* in the city of Washington," to Robert S. Bickley and authorized the trustee to convey the same to said Bickley "in like manner as by law the same ought to be conveyed to us" (Rec., pp. 174, 175).

Where the words "ground rent" and "ground rents" appear in the brief in italics they have been so printed by direction of counsel.

9. Deed to Robert S. Bickley for the Ground Rents Under the Daugherty Lease, and for Other Property Sold by Daniel Carroll Brent, Trustee.

Daniel Carroll Brent, as trustee, Thomas Peter and Thomas Monroe, executed a deed to Robert S. Bickley, pursuant to the sales made to Pratt and Budd. The deed is dated April 3, 1807 (Exh., G. Rec., p. 37). Brent is party of the first part thereto, Peter is party of the

second part, Monroe is party of the third part, and Bickley, the grantee, is party of the fourth part. It is not a joint deed but the separate deed of each of the grantors.

It recites the decree in the cause of Bickley against Blodget, whereby said Brent was appointed trustee to make sale "of sundry squares, lots and portions of ground and *ground rents* in the city of Washington;" the appointment of Brent as trustee to make such sales; the direction in the decree "that the defendant, Thomas Peter, upon the request of the said trustee do join in and become party to all the deeds of said trustee, in virtue of said decree to be executed;" and further recites the direction in the decree that Thomas Monroe, at the request of said trustee join in the execution of such deeds "where the outstanding legal title now remains in said Thomas Monroe, as superintendent of the city of Washington." The deed further recites the sale of "all the said property and *ground rents* directed to be sold;" and further recites the sale by the trustee to Henry Pratt of a number of lots and squares particularly specified, "and the *ground rents* reserved by the said Samuel Blodget by indenture made between him and James Daugherty, one of the defendants, bearing date the 13th day of April, 1801."

The deed then recites the sale to George Budd of a number of lots and squares, and that Pratt and Budd had assigned their purchases to Bickley, the grantee.

Brent, trustee, party of the first part, in consideration of the premises then conveys to said Bickley "all the right, title, and interest in and to the before mentioned squares, lots, and portions of ground and *ground rents* in the city of Washington," which was in the said Samuel Blodget, and also "all the right, title, and interest therein, which the said Thomas Peter derived in and by virtue of the deed referred to in said decree," from said

Blodget to said Thomas Peter, and Thomas Johnson, Jr., bearing date January 28, 1794, and "all the right, title and interest, which the said Thomas Monroe, defendant, hath in and to the same as superintendent of the city of Washington." Thomas Peter, the party of the second part, in obedience to the said decree, conveys to said Bickley, "all the right, title, and interest to the said before described squares, lots, and portions of ground and *ground rents*, which the said Thomas Peter derived in and thereto, by virtue of the deed," from said Blodget to him and Thomas Johnson, Jr. Obviously Peter under the deed to him and Johnson had no interest in said "*ground rents*," and could convey none.

Thomas Monroe, party of the third part, "in obedience to the said decree" conveys "all the right, title, and interest" which he the said Thomas Monroe, as superintendent of the city of Washington, had in and to a few of the lots, which are specified. Neither lot 20 in square 254, nor the "*ground rents*" are mentioned. He had no interest in either and does not attempt to convey any.

Two justices of the peace certify that Brent, the trustee, Peter and Thomas Monroe, the superintendent, appeared before them and respectively acknowledged the deed to be their and each of their act and deed "and the squares, lots, and portions of ground and ground rents therein mentioned to be the right, title, and estate of the said Robert S. Bickley, his heirs and assigns according to the true intent and meaning thereof."

Lot No. 20 in square 254 is not mentioned in the grants in this deed, either by Brent, the trustee under the decree, or by Thomas Peter, the surviving trustee, under the deed from Blodget to him and Johnson, and nothing passed by the grant of either, in so far as the said lot 20 in square 254 was concerned, except "the right, title, and interest" of said Blodget in the ground rents under the lease to Daugherty; and in the grant by Monroe

neither lot 20 in square 254 nor said ground rents are mentioned.

Appellant claims it to be apparent that neither by the decree, the advertisement of sale by the trustee, his report of sales, nor by the said deed to Bickley was the reversionary interest of said Blodget, under the lease to Daugherty, affected, or his estate in the lot diminished to any greater extent than was involved in his deprivation of the right which he previously had to the rents reserved for the unexpired term of the Daugherty lease, and the transfer of the right to Bickley.

10. Deed to Robert F. Howe, the Purchaser Thereof, for the Ground Rents Under the Frethy Lease.

Daniel Carroll Brent, the trustee, and Thomas Peter executed a deed, dated January 15, 1807, to Robert F. Howe (Exh. H, Rec., p. 42). This deed recites the decree in the suit of Bickley *vs.* Blodget et al., requiring the payment of certain moneys by Blodget to said Bickley and directing the sale of certain properties of Blodget in case of default and appointing Brent as trustee to sell the same; that the trustee advertised "all the property and ground rents directed to be sold;" that among the properties exposed for sale were the ground rents "reserved by the said Samuel Blodget by indenture made between him and the said Edward Frethy, one of the defendants, and that said Robert F. Howe became the purchaser of said ground rents.

This deed is not a joint deed but the deed of each of the grantors. The defendant, Thomas Monroe, superintendent, is not a party to it. Brent, trustee, party of the first part, in consideration of the premises conveys to Howe, the grantee, "all the right, title, and interest of Samuel Blodget in and to the said ground rents reserved by the said Samuel Blodget" by said indenture between him and said Frethy, and "all the right, title,

and interest of the said Thomas Peter derived in and thereto by virtue of the deed" from said Blodget to the said Thomas Peter and Thomas Johnson, Jr., deceased, bearing date January 28, 1794, and all the right, title, and estate which the defendant, Thomas Monroe, had in and to the same as superintendent of the city of Washington.

Thomas Peter conveys all interest in said ground rents "which he, the said Thomas Peter, derived in and thereto by virtue of the deed hereinbefore referred to," from Samuel Blodget to him and said Thomas Johnson, Jr.

Thomas Monroe, superintendent of the city of Washington, does not join in the execution of this deed, and, in fact, is not made a party to it. Lot 20 in square 254, is not mentioned in it.

As neither Thomas Peter, under the deed to him and Johnson, Jr., deceased, nor Thomas Monroe, as superintendent of the city of Washington, had any interest whatever in the "ground rents," Howe, the purchaser of said rents, took nothing through said Peter or Monroe by the deed given him.

Appellant also claims it to be apparent that neither by the decree, the advertisement of sale by the trustee, his report of sales, nor by the said deed to Howe was the reversionary interest of said Blodget, under the lease to Frethy, affected, or his estate in the demised ground diminished to any greater extent than was involved in his deprivation of the right which he previously had to the rents reserved for the unexpired term of the Frethy lease, and the transfer of the right to Bickley.

Only parcel A, the part of lot 20 demised by Blodget to Daugherty, as aforesaid, and parcel B, the part of said lot demised to Frethy, as aforesaid, are affected by the decree of October 4, 1805, and the proceedings under it which culminated in the deed to Bickley and in that to Howe for the ground rents.

The lease from Blodget to Fennell of the part of said lot included in parcel C is not mentioned in Bickley's bill of complaint, nor in the decree or other proceedings under it. It was affected later by a supplemental bill filed by Bickley and the proceedings under it.

The further mutations of title to the part of the lot leased to Daugherty, Parcel A, and the part leased to Frethy, Parcel B, as shown by the instruments referred to in appellee's bill of complaint, will now be mentioned, beginning with those which affect the Daugherty lease.

11. Other Deeds and Proceedings Affecting Parcel A, the Part of the Lot Leased to Daugherty.

Robert S. Bickley, by deed, dated May 1, 1813, conveyed to James Daugherty "and his heirs and assigns," the part of the lot leased to him by Blodget "on conditions mentioned in the lease" and "all the estate, interest and claim of the said Samuel Blodget in and to the part of said lot and premises which was afterward sold and conveyed by Daniel C. Brent as trustee under a decree of the Circuit Court of the District of Columbia for the county of Washington, to the said Robert S. Bickley, which will fully appear, reference being had to the land records of the county of Washington in the District of Columbia" (Exh. L, Rec., p. 52).

The deed referred to conveyed "the ground rents" to accrue during the unexpired term of Daugherty's lease. Daugherty already owned the leasehold interest and he gained by the deed from Bickley nothing more than an exoneration from his obligation to pay the annual rents to accrue during the unexpired term of his lease.

James Daugherty by his will dated June 27, 1826, devised and bequeathed "the whole of my (his) estate, real, personal, and mixed to my beloved wife Mary Daugherty, to her and her heirs for ever in fee simple" (Exh. M, Rec., p. 54).

Mary Daugherty by her will dated July 3, 1830, gave and devised her "house and lot numbered 20 in square 254" to William Hayman for life and after his death "to his children and their heirs forever" (Exh. A 9, Rec., p. 108).

William Hayman and others, adult children of William Hayman, deceased, filed their bill in chancery on May 5, 1847, against Anna B. Hayman, and others, minor children of said William Hayman, for the sale of the property given to them by Mary Daugherty's will (Exh. A 8, Rec., p. 97).

A decree for such sale was passed May 18, 1847, and appointing William Redin, trustee, to make it (Exh. A 7, Rec., p. 96). The trustee reported sale to John Byrne, who executed a deed of trust to George Cover to secure part of the purchase money, dated July 30, 1847 (Exh. N., Rec., p. 55). Byrne by a further deed, dated February 19, 1848, conveyed to Redin to secure another obligation (Exh. O., Rec., p. 57).

Redin, trustee, and Cover, trustee, by deed, dated September 25, 1852, in which it is recited that Cover acting under the deed to him, advertised the property for sale at public auction, and that Benjamin F. Isherwood became the purchaser, convey to him "and his heirs" said part of lot 20 in square 254, "and all the estate right, title, and interest legal and equitable" of the grantors therein and thereto (Exh. P., Rec., p. 60).

12. Other Deeds and Proceedings Affecting Parcel B, The Part of the Lot Leased to Frethy.

Frethy assigned his lease to Frederick Betz, "his executors, administrators and assigns" by deed dated September 19, 1801, "for the remainder of the said term of ninety-nine years" (Exh. R., Rec., p. 66).

Frederick Betz assigned the lease to George Betz "his heirs and assigns," by deed dated January 24, 1803,

"for and during the residue of the term of ninety-nine years" (Exh. S., Rec., p. 69).

George Betz assigned the lease to John Thorpe, "his executors, administrators, and assigns," by deed dated February 15, 1804, "for the unexpired residue" of the term of ninety-nine years (Exh. T., Rec., p. 71).

William Dowling probably succeeded to the ownership of the lease by an unrecorded assignment of Thorpe's interest. Dowling claims, in a deed from him to Robert F. Howe to which he was a party, and to be mentioned presently, that he was the owner of the leasehold interest.

A tax deed from the corporation of the city of Washington, dated August 17, 1830, to William Dowling, recites that "part of lot 20 in square 254" became chargeable to the corporation for taxes "as the property and in the name of Robert F. Howe," and was sold, and it conveys to Dowling, his heirs and assigns "all the said part of lot No. 20 and the improvements in square 254." The part of the lot is not otherwise described (Exh. U., Rec., p. 73).

William Dowling conveyed to Robert F. Howe and his heirs "all the right, title, interest, and estate of him the said William Dowling," in the part of the lot conveyed to him by the tax deed "except the leasehold right belonging to him in the same," and stating it to be the intention of the parties "that the said William Dowling is not to surrender his leasehold interest in the said part of the lot and premises." The part of the lot is not specifically described in this deed either (Exh. V, Rec., p. 75).

Being the owner of the leasehold interest Dowling was obligated by the lease to pay the taxes. Where it is the duty of a lessee to pay taxes upon premises, and he suffers the same to be sold for default of payment, he can not set up the title thus acquired against his landlord.

Washburn on Real Property, vol. 1, sec. 745.

No change was effected therefore by the tax deed to Dowling or by the deed from Dowling to Howe in the title to either the reversionary interest, the leasehold interest, or the right to the ground rent. They stood precisely as before—Dowling with his leasehold interest, Howe with his right to the ground rents for the unexpired term, and Blodget with the reversion.

Robert F. Howe, by his will, dated July 18, 1830, bequeaths sundry legacies, and authorizes his executors to sell "all" his estate for the purpose of paying them. The composition of his estate was not described (Exh. X, Rec., p. 81).

Sarah Howe and Edward P. Pearson, executors of Robert F. Howe, executed a deed to William Dowling, dated July 18, 1835, in which it is recited that said Robert F. Howe died seized of a part of lot 20 in square 254, which he held "under a deed of conveyance to him from Daniel C. Brent, trustee, and Thomas Peter, made the 15th day of January, in the year of our Lord 1807," reference to which, it is stated, "will show the authority under which said Brent acted," and that at the time of the making of the said deed the property "was subject to a lease for ninety-nine years," as, it is further recited, will appear "by reference to an indenture of lease, dated April 4, 1801;" and that by said Howe's will the grantors are authorized to sell all his estate, real and personal. The deed transfers and conveys to Dowling and his heirs "all the right, title, interest, estate, property, claim, and demand which the said Robert F. Howe, deceased, had in and to the premises above described at and immediately before the time of his decease" (Exh. W, Rec., p. 77).

As the only interest which Robert F. Howe acquired in the Frethy lease under the deed to him from Brent, trustee, and Peter, was a right to the rents to accrue for the unexpired term of the lease this interest was all that

passed to Dowling, the owner of the leasehold, and the party obligated to pay such rents. The effect of this deed to him, Dowling, was to exonerate him from the obligation to pay the annual rents to accrue under the lease for its unexpired term.

William Dowling, by his will, dated October 15, 1852, gives to his son William all of his property "for life and after his death to his heirs at law forever" (Exh. Y, Rec., 82).

John F. Ennis, trustee by deed dated May 11, 1865, conveyed to Benjamin F. Isherwood, his heirs and assigns, the part of said lot 20 included in parcel B (Exh. A2, Rec., p. 86). The deed recites a decree of the Supreme Court of the District in a cause to which the heirs of William Dowling were parties for the purpose of division among his heirs; that in pursuance of the authority of said decree the grantor had advertised the premises for sale at public auction and had sold the same to grantee as the highest bidder, who had paid the purchase money.

The leasehold interests in said parcels A and B thus became vested in said Isherwood.

Benjamin F. Isherwood by deed, dated May 4, 1882, conveyed to Caleb C. Willard, his heirs and assigns, parts of said lot 20 by a description which included said parcels A and B (Exh. Q, Rec., p. 64).

It is averred in paragraph 6 (Rec., p. 7, near end of page) of appellee's bill of complaint that by this deed the whole of said lot 20 was conveyed to said Willard; he, said Isherwood, having previously acquired parcel C which includes the ground leased by Blodget to Fennell.

The Fennell Lease.

So far the instruments of title which have been referred to have relation only to parcels A and B, being the parts of said lot 20 leased by Blodget to Daugherty and Frethy, respectively. The lease to Fennell is in the

same form as those to Daugherty and Frethy. Exhibit D is a copy of it (Rec., p. 23).

The lease of Blodget to Fennell is not mentioned in the original bill in the case of Bickley *vs.* Blodget *et al.*, and it is not affected by the decree for sale of October 4, 1805, passed on that bill, or by the proceedings under it (Rec., p. 161, et seq.).

Appellees' bill of complaint sets forth only partially the instruments through which their alleged title in fee simple to parcel C is derived. It is averred in paragraph 6 that under a supplemental bill filed by Bickley, a decree passed thereon, and a deed to Charles Glover from John Davidson, trustee, appointed in the place of Washington Boyd, the trustee originally named in the decree, a fee simple title to said parcel C became vested in said Glover, which fee simple title of said Glover "is vested by mesne conveyances in them." The mesne conveyances are not specifically referred to in the bill nor are copies of them filed with the bill except that it is averred in paragraph 7 of the bill that the heirs of Abraham Bradley conveyed said parcel C to Benjamin F. Isherwood, by deed dated September 21, 1852, who conveyed the three parcels to Willard by the above-mentioned deed dated May 4, 1882 (Rec., p. 10).

Bickley's supplemental bill, filed May 28, 1810, refers to the previous decree for the sale of Blodget's property, passed on his original bill; states that the sums realized were insufficient to pay the amount due him from Blodget; that he had discovered other property of Blodget liable for the debt, not included in his former bill, among which are several squares which he names; he also mentions certain lots which Blodget "let on ground rent, reserving an annual rent" to divers persons, which tenants "he does not wish to disturb or interfere with, but wishes to leave them in the quiet enjoyment of their leases under the said Blodget, under the terms and con-

ditions expressed in the said leases, respectively, but wishes and prays the court to direct the ground rents reserved thereon, and the reversionary interests of the said Blodget therein, whatever the same may be, to be sold for his benefit." Among the leases mentioned is one to Edward Fennell of the part of lot 20 in square 254 (parcel C) "for a term of years renewable from time to time forever" (Rec., p. 179).

By the decree passed on the supplemental bill it was provided that "all and singular the property mentioned in the supplemental bill filed in this cause be sold, except square 25, and that Washington Boyd be, and he is hereby, appointed trustee to make and effect said sale;" and the trustee was directed to make "a full report to the court of all and singular his proceedings under this decree (Rec., p. 182). It is averred in said paragraph 6 that the report of sales by the trustee "is missing from the files" of the court. Upon his own application, Washington Boyd was relieved from duty as trustee under the decree, and on June 26, 1818, John Davidson was appointed trustee to make deeds to the purchasers at the sales of the property made by said Boyd (Rec., pp. 183-184).

John Davidson, trustee, conveyed to Charles Glover, his heirs and assigns, by deed dated May 8, 1818, "all the interest, claim, and right of the said Samuel Blodget" to the part of lot 20 in square 254 fronting 11 feet 11 inches on North F Street, "leased to Edward Fennell for 99 years renewable forever."

Copies of the instruments affecting the title to said Parcel C, intermediate the deed to Charles Glover, and the deed from Isherwood to Caleb C. Willard, dated May 4, 1882, are not made exhibits to the bill of complaint; nor are said instruments referred to in it, with a single exception. The bill avers the conveyance of the ground in the Parcel by Abraham Bradley's heirs

to Benjamin F. Isherwood by deed dated September 21, 1852, as above stated.

Appellant contends that upon the showing thus made by the bill of complaint as to said Parcel C, no reason is apparent for enjoining the ejectment suit as to said Parcel. If the opinion of appellees is well founded, which is expressed in said paragraph 6 of the bill, that by the mesne conveyances to which they refer in general terms, but do not particularly set forth, an absolute fee simple title to said parcel C is vested in them, it is evident that such fee simple title constitutes a plain, adequate, and complete defense in the ejectment suit as to this parcel, and that as to it the plaintiff in ejectment could not recover.

Contentions of the Respective Parties as to Parcels A and B.

With Blodget as a common source of title, the contention of appellees as it may be gleaned from their bill of complaint is:

1. That the leases to Daugherty and Frethy were *perpetual* leases and that the right to receive rents *in perpetuity* under them was sold under the decree passed on Bickley's original bill; that if the option to renew had been exercised, the reversion would have remained naked and the renewal would have been of no pecuniary benefit to appellant (Bill, par. 14, Rec., p. 13).

2. That under the law a fee-simple title passed under the term "ground rents" (Bill, par. 13, Rec., p. 12).

3. That the purchase by the lessees of the "rent charge" merged the whole beneficial and equitable estate in the grantors of complainants (appellees), and therefore the equitable title to the said premises is vested in complainants (Bill, par. 13, Rec., p. 12).

4. That the acts of the parties, successively claiming title, show that it was their intention to deal with a fee-simple title and they supposed they had done so (Bill, par. 13, Rec., p. 12).

5. That Isherwood received fee-simple deeds for the property which he purchased; that he had the titles to the same examined by competent lawyers, who advised him that he had acquired a good title in fee-simple by said deeds (Rec., pp. 221 to 225). That from the time of his purchases down to his sale and conveyance to Willard, he claimed, as against the whole world, to own the premises in fee-simple; that he collected rents for his own benefit during all that time from houses upon the ground and made and paid for repairs, and paid all charges and taxes thereon, and that he made and recorded a subdivision of the lot on August 10, 1873 (Bill, par. 7, Rec., pp. 10-11).

6. That Willard bought Parcels A and B from Isherwood and received a fee-simple deed therefor, from him, dated May 4, 1882; that he had the titles to the property examined by a title company which reported the same good in fee-simple in Isherwood; that thereupon he entered into possession, claiming as against the whole world a fee-simple title thereto; that up to the time of his death he occupied the premises and every part thereof under said claim of title, and collected for his own benefit rents from the houses which were, and are, thereon, and paid for all repairs on the same and all taxes and charges thereon down to the time of his death, and since his death complainants have succeeded to his possession and title and ha collected rents, paid for repairs and acted generally as the owners in fee-simple (Bill, pars. 8, 9, Rec., p. 11). That in the year 1896 said Willard erected a building upon the rear part of said lot, at large cost, which improvements remain up to this date yielding rent to appellees.

7. That said Willard had no notice or knowledge of any claim on the part of the defendant, or of any other person or persons, adverse to him prior to the institu-

tion of the ejectment suits in October, 1903 (Bill, par. 10, Rec., p. 11).

8. In paragraph 14 of the bill it is averred:

A. That while complainants believe they have a good defense at law against the said ejectment, nevertheless, their legal remedy is not as "full, adequate and complete" as their remedy in equity, for two reasons (1), that the plaintiff in ejectment can take a non suit and possibly acquire the naked legal title and harass the complainants with repeated actions of ejectment; and, (2), that it is claimed by the defendant that the term "ground rents" does not import in law a fee simple title; and if this claim be well founded then complainants might be exposed to great delay and expense in resisting said ejectment or ejectments and yet in the end be compelled to resort to this court to protect their equitable title (Rec., p. 13).

B. That the lessees under said leases had the right at any time during the pendency of the leases to acquire the reversion in fee by the payment of sums stated to the holders of the reversion, and in their third prayer complainants ask, in case the court should be of the opinion that appellant is vested with the reversion in fee as the assignee of the heirs of said Blodget, that the court will determine what, if any, sums should be paid to the defendant as a condition to the conveyance by him to complainants of the *naked* reversion, which he, the defendant would upon that supposition hold in the premises in question, and upon such payment the court decree that he convey to complainants such interest in reversion (Rec., pp. 13-14).

C. That complainants have been guilty of no laches; that when said Willard, their testator, first learned of the claim of defendant, said Willard was in bad health suffering from a disease which caused his death; that he never had any notice or suspicion that there was any

defect in his title; that it was difficult for him to find his papers including the abstract of title upon the faith of which he bought the lot; that it was not until the summer of 1905 that he was able to learn the residence of said Isherwood whose deposition he took in said ejectment case in June, 1905; that it was not until November, 1905, that complainants were able to get from the city of Baltimore, in which the system of "ground rents" has for a long time obtained, "information as to the custom there in existence for more than a century, as to the legal status of said ground rents and the interpretation of said phrase among persons therewith conversant;" and, that since said Willard's death appellees have been diligent in following up the sources of information which had come to said Willard's knowledge (Rec., pp. 13-14).

D. Wherefore complainants aver that they have a right to a renewal of the said leases, "in case the court should be of the opinion that a fee simple title did not pass under the sale of the 'ground rents,' or that said leases have not merged as hereinbefore set forth, upon the payment of such nominal sum as the court shall find the original lessor or his heirs entitled to for a renewal of said leases in the existing situation, in which they have no beneficial interest in said lots;" and the complainants ask in their third prayer, that if the court should be of opinion that complainants did not derive through the mesne conveyance and proceedings set forth in the bill and are not now possessed through the same, with all the right, title and interest to the estate which the said Blodget owned in the said lot and should further be of opinion that the defendant is vested with the reversion in fee, as the assignee of the heirs of said Blodget, then that the court will decree defendant renew the leases to the complainant for a period of ninety-nine years, renewable forever (Rec., pp. 13-14).

On the other hand appellant contends, that it appears, as matter of law, on the face of the bill:

1. That Samuel Blodget, being the equitable owner of the lot, conveyed it and his other real estate to Peter and Johnson, Jr., in trust to secure obligations which might arise under the lottery.

2. That in April, 1801, he executed leases for ninety-nine years to Daugherty and Frethy of two of the three parts of the lot, which have been designated as Parcels A and B, reserving annual rents; that in each lease an option of renewal for other and further terms of ninety-nine years and for the purchase of the leased ground are given.

3. That by the decree in the suit instituted by Bickley to enforce his claim, under the deed from Blodget to Peter and Johnson, Jr., as the purchaser of a ticket in the lottery and by the proceedings under the decree, Blodget's right to the rents to accrue under the leases for their unexpired terms was sold and applied to the payment of Bickley's claim leaving Blodget's reversionary rights unimpaired.

4. That the leasehold interest in the Parcels A and B, became vested in Isherwood, who, in 1882, conveyed it to Willard.

5. That the leases having expired without an exercise of the right of renewal or of the right to purchase, appellant, in whom the reversion is now vested, is entitled to possession.

6. That no equitable considerations in the cases of said Parcels A and B, based on the instruments of title, are presented by the bill under which the court of equity had jurisdiction to enjoin appellant from the further prosecution of his action of ejectment, or to grant to complainants any relief whatsoever, in regard to said Parcels.

7. That if the complainants rely on adverse possession, the defense is available to them on the trial of the ejectment suit, and the jurisdiction of the law court should not be interfered with by the equity tribunal.

As to Parcel C.

In regard to Parcel C appellant contends, that in view of the unqualified assertion, made by complainants of an absolute title in them in fee-simple to said Parcel (Brief, p. 20), it is evident no reason exists as to this Parcel for enjoining the ejectment suit. Such title, if proved, in the ejectment suit would be a complete defense to the action, in so far as Parcel C, which is part of the ground claimed in that suit, is concerned; and would bar a recovery by the plaintiff of this part of the lot under sections 985, 993, 1000 and 1002 of the District Code.

The Prayers of the Bill.

The prayers for relief are in the alternative:

2d. That the defendant (appellant) be enjoined and restrained from the further prosecution of his said action of ejectment, in case the court should be of opinion that all the right, title, and interest of said Blodget in said lot became vested in complainants (appellees), under "said mesne conveyances and proceedings."

3d. And in case the court should be of opinion that all the right, title, and interest of said Blodget in said lot did *not* become vested in complainants under the "said mesne conveyances and proceedings," and should be of opinion that the defendant (appellant) is vested with a reversion in fee in said lot, as assignee of the heirs of said Blodget, that then and in such event the court will decree that the defendant renew the said leases to the complainants for a period of ninety-nine years, renewable forever; and that the court will further determine what, if any, sums should be paid to the said defendant as a condition to the conveyance by him to the

complainants "of the naked reversion, which he, the said defendant, would, upon that supposition, hold in the premises in question;" and that upon the payment to him of such sums the court shall decree that he forthwith convey to the complainants such interest in reversion (Rec., p. 14).

The case coming on to be heard in said Supreme Court of the District upon the demurrer, it was by the court decreed, on December 28, 1908, that said demurrer be and is overruled; and defendant electing, thereupon, in open court, to stand on his said demurrer, it was further decreed by the court, on said day, that complainants were vested with all of the title to said lot and the three several parts thereof, which was formerly vested in said Blodget, and that the defendant be, and is perpetually enjoined and restrained from the further prosecution of his said action of ejectment for the recovery of said lot; and further that said defendant be and is perpetually enjoined and restrained from instituting any further proceedings "either at law or in equity, for the possession of, or for the assertion of any claim to the said lot or any part thereof derived by him through said Blodget" (Rec., pp. 216, 217).

From this decree overruling his demurrer, the defendant appealed to the Court of Appeals of the District, and the cause coming on to be heard in said Court of Appeals upon said appeal, it was by said court decreed, on May 10, 1910, that the decree of the Supreme Court of the District be affirmed with costs (Rec., p. 233). From the decree of the Court of Appeals the defendant appealed to this court.

Assignment of Errors.

Appellant assigns error in the proceedings in said cause, in the court of Appeals of the District of Columbia in the following particulars:

1. The Court of Appeals erred in affirming with costs

the decree of the Supreme Court of the District which overruled the defendant's demurrer to the bill of complaint and granted relief, as aforesaid, to complainants, and in not reversing the said decree for lack of equity in the bill, and remanding said cause to the said Supreme Court of the District with directions to vacate its said decree and to enter a decree sustaining said demurrer and dismissing said bill.

2. The Court of Appeals erred in affirming the said decree and in not reversing the same and remanding the cause to the Supreme Court of the District with directions to vacate the said decree and to enter a decree sustaining said demurrer and dismissing said bill, because under the facts set forth in said bill complainants were not entitled to the relief granted by said decree against the defendant, nor were they entitled to any extent or in any degree, to the relief prayed in said bill against the defendant.

3. The Court of Appeals erred in affirming the decree of said Supreme Court of the District by which it was adjudged that the equitable title in fee-simple to said lot 20 in square 254, formerly vested in Samuel Blodget, had become and was vested in complainants and not in the defendant, and by which it was further adjudged that the defendant be perpetually enjoined and restrained from further prosecuting the action of ejectment instituted by him for the recovery of said lot, and perpetually enjoining and restraining him from the assertion of any claim *to any part* of the said lot, because under sections 985, 993, and 1000 of the District Code defendant was entitled in his said ejectment suit to recover the whole of said lot *or any part thereof less than the whole* to which he might prove himself entitled on the trial of said action, and complainants under the facts stated in their bill show that they have no title, legal or equitable, to said parcels A and B, parts of said lot, and that

as to said parcel C, the remaining part of said lot, the fee-simple title therein claimed in said bill, to be vested in complainants, constitutes a good defense in bar of a recovery in said ejectment suit of said parcel C.

4. The Court of Appeals erred in holding that the Supreme Court of the District had jurisdiction of the case presented by the bill of complaint, because the grounds assigned in support of defendant's demurrer to said bill were well founded.

ARGUMENT.

The several assignments allege error in the decree of the Court of Appeals, in affirming the decree of the Supreme Court of the District of Columbia, and as they depend upon the same propositions of fact and of law, may be considered together. It was decreed by the Supreme Court of the District that the demurrer interposed by appellant, as defendant to the bill of complaint, be overruled, and further decreed that complainants, appellees, were vested with all the title to lot 20 in square 254, formerly vested in said Blodget, under his purchase of the lot from the Commissioners; that the prosecution of the action of ejectment, brought by defendant, claiming title under said Blodget, to recover possession of said lot and the assertion of *legal* title to said lot by defendant constitute a cloud upon the title of complainants to the same, and constitute vexatious litigation on the part of the defendant; that the defendant, his agents and attorneys, and all persons claiming and to claim under him, be, and are perpetually, enjoined from the further prosecution of said action of ejectment; and that the defendant, his agents and attorneys, and all persons claiming under him, be enjoined from instituting any

further proceedings, "whether at law or in equity for the possession of, or for the assertion of any claim to the said lot of ground or any part thereof, derived from or through said Samuel Blodget (Rec., p. 216; Brief, p. 28).

In the District of Columbia ejectment is the proper action for the trial of title to land and of the right to its possession.

Section 985 of the District Code provides that plaintiff in ejectment "must describe the premises claimed with reasonable certainty, and set forth the nature and quantity of the estate claimed by him in the same." Appellant's declaration in the ejectment suit (Rec., pp. 16, 17) complies fully with said requirements. It describes the premises claimed as "original lot 20 in square numbered 254, in the city of Washington, in the District of Columbia, . . . in which the said plaintiff claims the whole right, title, and interest in fee simple."

Section 993 provides that "the plaintiff under a claim to certain described premises may recover *less* than the whole property claimed."

By section 1000 it is provided that "if the plaintiff's title be established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property or interest claimed in the declaration as the case may be; if, on the contrary, the plaintiff fail to make satisfactory proof of title, the verdict shall be for the defendant as the whole or part of the property as the case may be, and it may be for the plaintiff as to part and for the defendant as to the other part, and judgment shall be rendered according to the verdict," etc.

By section 1002 it is provided that "any final judgment in an action of ejectment shall be conclusive as to the title thereby established, as between the parties to the action and all persons claiming under them since the commencement of the action."

In Oelrichs *vs.* Spain, 15 Wall., 211, 227, it is said:

> "It has been insisted by counsel for appellants that there is a complete remedy at law, and that the bill must therefore be dismissed. Such must be the consequence if the objection is well taken. In the jurisprudence of the United States, this objection is regarded as jurisdictional and may be enforced by the court *sua sponte*, though not raised by the pleadings, nor suggested by counsel.
>
> "The sixteenth section of the judiciary act of 1789 provides 'that suits in equity shall not be sustained in any case where a plain, adequate, and complete remedy can be had at law;' but this is merely declaratory of the pre-existing rule and does not apply where the remedy is not 'plain, adequate, and complete;' or, in other words, where it is not as practical and efficient to the ends of justice and to its prompt administration as the remedy in equity.
>
> "Where the remedy at law is of this character, the parties seeking redress must persue it. In such case the adverse party has a constitutional right to a trial of the issues of fact by a jury."

Applying to the present appeal the above provisions of the Code and the principles announced in the case cited, appellant is entitled to maintain his action of ejectment upon the terms prescribed by the Code, and to recover the whole or such part of the premises as he could establish his right to by proof on trial, unless it appears from the bill of complaint of appellees, as devisees of Caleb C. Willard, who was the defendant in said ejectment suit, that they are invested with equitable rights of ownership in each of said parcels A, B, and C, parts of said lot, which are superior to the rights claimed by appellant, plaintiff in said ejectment suit, as disclosed by the bill, and which equitable rights of complainants are of such a nature as not to be equally available to them as a defense in the action at law as in

equity, and hence that their remedy in the ejectment suit would not be "as plain, adequate, and complete" as in equity. If the bill fails to show such equitable rights in complainant to either of said parcels, the Supreme Court of the District, as an equity court, was without jurisdiction to interfere with the ejectment suit by injunction or otherwise.

The Theory of the Bill of Complaint.

There are two aspects to the bill of complaint. Under its averments of fact, and prayers for relief, it is a bill to quiet title and a bill for specific performance, each based upon grounds by which neither is supported.

Considered as a bill to quiet the title to said parcels A, B, and C, the three parts of said lot 20, it shows no ground for the intervention of a court of equity for the reason that as to said parcels A and B the complainants, by their bill, show no title whatever, legal or equitable, and are, therefore, entitled to no relief as to said parcels A and B; and as to said parcel C no ground is shown for the relief prayed, because, by the averments of the bill which relate to said parcel C, an absolute unqualified title in fee is asserted in complainants, and this clearly constitutes a plain, adequate, and complete remedy in the ejectment suit, in so far as said parcel C is concerned (Bill, pars. 6, 13, cl. 1, Rec., pp. 5, 12).

Considered as a bill for specific performance of the agreement of the lessor to renew the leases and to convey the ground described in the lease to Daugherty (parcel A), and the ground described in the lease to Frethy (parcel B), the bill shows no ground for the grant of relief. The options given the lessees and their successors in interest for a renewal of the leases, and for the purchase of the leased ground, were required to be exercised during the terms of the leases. And not having been so exercised the rights of the lessees and their successors in interest,

and the obligation of the lessor and his successors in title to the reversion, ceased with the expiration of the terms granted in the respective leases.

No Title Whatever, Either Legal or Equitable, to Parcels A and B is Shown by the Bill to be in the Complainants.

Tracing the history to the title of said lot 20 in square 254, as it is shown by the instruments referred to in the bill of complaint, it becomes evident that neither by said instruments, under which complainants claim, that the former equitable interest of Blodget in Parcels A and B has become vested in them, nor by other averments in the bill do complainants show that title, either legal or equitable, to said parcels, in fee simple, is vested in them. It becomes, in fact, apparent that the former equitable title of Blodget to said parcels in fee is now vested in appellant, and that the only interest which ever became vested in said Willard, devisor of appellees in said Parcels A and B, was a leasehold interest, which had expired prior to said Willard's death.

The Legal Title to Parcels A and B.

The legal title to the tracts of land upon which lot 20 in square 254 was laid out, was originally vested in David Burnes. He conveyed the tract in 1791 to Beall and Gantt and the survivor of them in trust that a Federal city, which was subsequently called the City of Washington, should be laid out upon the tract conveyed and other lands, and in trust for the following purposes, among others, that after such lots and squares as might be deemed necessary for the use of the United States had been selected, an equal division of the residue of the lots, that is, the lots available for private buildings and private purposes should be made between the grantor and the Commissioners appointed under the act of Congress of

July 16, 1790; and that as to the lots which fell to Burnes on such division, the same should be conveyed to him by the trustees; and as to the other lots that is those which did not fall to him on such division, the same should be sold by the Commissioners and the proceeds of sale applied first to the payment of said Burnes, at a certain rate per acre, for the portion of his land taken for the use of the United States, and that the residue of such proceeds should be turned over to the President as a donation of money, to be applied to the purposes of the act of July 16, 1790, that is, to the erection of the public buildings, etc.; that the lots which went to Burnes on the division should be conveyed to him by the trustees, and that the lots which were to be sold by the Commissioners should be conveyed when sold to the respective purchasers of them by the trustees upon the order of the President (Exh. A, 14; Rec., p. 197; Brief, pp. 3-9).

Blodget bought lot 20 from the Commissioners and paid for it, but received from them no certificate of such purchase and payment, nor did he obtain a deed to the lot from the trustees under Burnes' deed of conveyance of his lands in trust. Through his purchase of the lot, equitable title in fee to it became vested in Blodget; the legal title remained in the trustees under Burnes' deed and still remains in the heirs of the survivor of them.

The Equitable Title to Parcels A and B.

Blodget's equitable title in fee to the lot passed to Peter and Johnson by the deed from Blodget to them of January 28, 1794 (Exh. 3, Rec., p. 25).

This deed recites "that for securing the payments of the prizes" in the lottery, etc., the grantor conveys to grantees all his real estate in the Territory of Columbia, and certain personal estate, with a condition that if grantor shall faithfully comply with his obligations, the deed is to become void. The only effect of this deed

was to create a lien on the property conveyed for possible future obligations of the grantor. The grantees were vested with no control over the property conveyed or right to the use of the same. They were not even authorized to sell in case of default. The grantor's right to the use, occupation and control of the real estate conveyed continued until proceedings should be instituted to enforce the lien.

The execution by Blodget of three leases of parts of lot 20 in square 254 "for periods of ninety-nine years, renewable forever, with rights of purchase, to the lessees, respectively, for the respective amounts in said leases prescribed," is averred in paragraph 6 of the bill (Rec., p. 3), to wit, one dated April 13, 1801, whereby he demised part of the lot to James Daugherty, (Exh. B, Rec., p. 18); one dated April 14, 1801, by which he demised another part of the lot to Edward Frethy (Exh. C, Rec., p. 20); and one dated April 20, 1804, by which he demised the remaining part of the lot to Edward Fennell, his term to run from April 16, 1801 (Exh. D, Rec., p. 23).

These leases are in the same form, *mutatis mutandis*. The deed to Daugherty states that the grantor "for and in consideration of the payment of the rent and performance of the covenants hereinafter mentioned on the part of the said James Daugherty, his executors, administrators and assigns, to be paid and performed," demises the premises, (parcel A) to the said Daugherty, his executors, administrators and assigns for the term of ninety-nine years, he and they, "yielding and paying therefor yearly and every year during said term, unto the said Blodget, his heirs and assigns, the yearly rent of $40, current money of the United States, free and clear of all taxes, assessments or public dues now or hereafter to be paid, taxed or assessed on said demised premises in annual payments on the said 13th day of

April in each and every year, the said term of ninety-nine years to be renewable forever." Then follows a provision for re-entry and distress at lessor's option in case of default in the payment of the rent reserved for the period of forty days; and the further provision that if the rent reserved shall be in arrears and unpaid for the space of sixty days the lessor, his heirs and assigns may re-enter and repossess the demised premises, and that in such case the indenture shall be "utterly void and of no effect."

The only specific covenants on the part of Daugherty, the lessee, are that he shall "well and truly pay the above reserved yearly rent," and that he, shall erect and build a good and substantial dwelling house on the premises "to be completed during the course of the present year," and if not done that he Daugherty shall pay to the lessor, his heirs and assigns the damages which shall or may accrue to him or them by the default. Then follows a covenant by the lessor for himself, his heirs and assigns with the said Daugherty, his heirs, executors, administrators and assigns, that the lessor, his heirs or assigns "at any time or times during the continuance of the present or future demise, on the request, and at the proper costs and charges of the said James Daugherty, his heirs or assigns and on his or their payment, or tendering in payment to the said Samuel Blodget, his heirs or assigns, of the sum of $500 shall and will make and execute a deed in fee-simple for said lot and premises above demised to the said Daugherty, his heirs and assigns forever."

The import of the contract between the parties manifested respectively by these instruments is plain to the point that by each of them a lease for a specific and definite term of ninety-nine years, *and no longer*, was created, and that an option was given, in connection with them, by the lessor to the respective lessees and their successors in interest, for other and further terms

of similar duration, and also an option for the purchase of the demised premises during the term created or a future term.

The leases to Daugherty and Frethy ended with the expiration of their respective terms. They did not, *proprio vigore*, extend or continue such terms for a definite or indefinite period. The options made the existence of new leases, in the future, possible but not certain. The creation of future leases depended wholly, on the exercise of the privilege of a renewal, by each lessee and his successors in interest. The privilege was not exercised in either instance, but if it had been and a new lease or leases executed, the payment of rents, incident to them, would be governed by their own provisions and not by those of the leases to Daugherty and Frethy.

> "A covenant to renew the lease is a covenant whereby the lessor binds himself to make another lease, at the expiration of the term, either to the lessee or his assigns, for the same or some other period mentioned."
>
> Martindale, Conv., sec. 354.

Nevertheless, as will presently appear, appellees' claim of equitable title to said parcels A and B, under the "mesne conveyances and proceedings" set forth in their bill of complaint, is made by them to depend upon the proposition that the leases to Daugherty and Frethy were *perpetual* leases, with rents payable *in perpetuity* under them.

In the decree of October 4, 1805, in the case of Bickley *vs.* Blodget *et al.*, numerous specified squares and lots belonging to Blodget are directed to be sold for the payment of Blodget's debt to Bickley, and then follows this provision:

> "And it is further ordered and decreed by the authority aforesaid that certain ground rents reserved by the said defendant Blodget by indenture

made between the said Samuel Blodget of the one part and Edward Frethy, one of the defendants aforesaid, of the other part, bearing date on the 4th (14th) day of April, 1801, and certain other ground rents reserved by the said Samuel Blodget by indenture made between the said Samuel Blodget of the one part and James Daugherty, one of the said defendants, of the other part, bearing date on the 13th day of April, 1801, be also sold for the purposes aforesaid" (Rec., pp. 162-163).

In paragraph 13 of their bill of complaint (Rec., p. 12), certain contentions of appellees as to the meaning of the term "ground rents," used in said part of said decree, are stated as follows:

> "2. That under the law a fee simple title passed in the original decree in said cause under the term 'ground rents.'
>
> "3. That in any event by the sale of said 'ground rents' the right to receive the rents of the said lot number 20 passed absolutely to the purchaser, and there only remained in the said Blodget and his heirs a mere naked reversion, without beneficial estate.
>
> "4. That in any event the purchase by the lessees of the rent charge merged the whole beneficial and equitable estate in the grantors of the complainant, and that therefore the equitable title to the said premises is vested in the complainants."

In the same connection it is averred in paragraph 14 of the bill of complaint (Rec., p. 13, middle of page), as follows:

> "Inasmuch as the right to receive rents in perpetuity was sold under said bills and decrees in equity, there remained nothing in the lessor, or his heirs, save the mere possibility of a naked reversion upon the termination of said leases without the exercise of the rights of purchase. If the

> said right had been exercised, the reversion would have remained naked, and the renewal would have been of no pecuniary benefit to the defendant, nor would he have been entitled to the said sums of money for said renewal for the reason that the rents reserved were the consideration moving for said renewals and they belonged to the grantors of the complainant and not to the defendant or to his grantees, and moreover the said leases as to parcels A and B were merged, when, as hereinbefore stated, they were bought by the grantee's purchasers under said decree in equity."

It follows from these contentions and averments that appellees' claim of equitable title to parcels A and B is based upon three erroneous assumptions:

1. That the leases to Daugherty and Frethy were perpetual leases upon which the rents reserved were payable in perpetuity.

On the face of the instruments, as has just been shown, each lease was for a certain, specific, and definite term of ninety-nine years and no longer, and ended, necessarily, with the expiration of the term.

2. The second erroneous assumption of appellees is that under the decree of the court in the case of Bickley *vs.* Blodget et al., which provided for a sale of the "ground rents" reserved in the lease to Daugherty for parcel A and in the lease to Frethy for parcel B, and the sale of such "ground rents" by Brent, the trustee appointed to make such sale, and by the deed from Brent, trustee to Bickley, and the deed from him to Howe, a right to such ground rents passed to the purchasers in perpetuity.

The term "ground rents" as used in the decree has no occult meaning, to the ascertainment of which recourse is necessary to the local customs or views of public policy prevailing in Maryland or elsewhere or to the

senses, technical or nontechnical, in which the term is understood in other jurisdictions. What is meant by it must be determined by the context and in the light of the circumstances under which the decree was passed and they do not leave the matter in doubt. The things decreed to be sold were the "ground rents" reserved in the Daugherty and Frethy leases and the only rents mentioned in the leases are the annual rents reserved by Blodget in each demise, to be paid during the terms of ninety-nine years and which would cease, of course, with the expiration of the terms.

The leases were brought before the court by Bickley's bill and the copies of the same filed as exhibits thereto and it must be presumed that the court fully understood the legal nature of the same. It is inconceivable that when the court decreed the "ground rents," under the Daugherty and Frethy leases, to be sold, it meant anything more than a sale of the rents to accrue during the unexpired terms of the leases. These rents were incident to the reversion, without which they could not continue The court sequestrated them, as well it might, they being a vested right—an asset of Blodget's—and left unaffected his interest in the revesion.

The language of Bickley's bill of complaint, the language of the courts decree, the language of the report of sales made by Brent, trustee, to the court, as to the sales of the "ground rents" the confirmation by the court of the report of sales and the language of the deeds from the trustee to Bickley and to Howe for the "ground rents" seem to clearly demonstrate that the "ground rents" decreed to be sold and which were sold had and could have relation only to the rents, which were to become payable by the lessees during the unexpired terms of their leases.

Bickley in his bill of complaint mentions a great number of lots and squares, which were the property of

Blodget, and he also sets forth the leases to Daugherty and Frethy for parts of said lot 20, and he asks that the leases be "annulled and held of no validity;" and that said lot 20 be sold with the other property mentioned and the proceeds of sale applied to the satisfaction of the debt due to him from Blodget. Daugherty was not served with process; Frethy answered, stating that he had assigned his lease to Betz and that he no longer had any interest in it. Betz was not made a party to the suit and was not served with process.

Whatever the courts reason may have been for not directing the sale of said lot 20 and merely directing the sale of the "ground rents" to arise under the Daugherty and Frethy leases, there seems to be no room for doubt that by the decree nothing but Blodget's right to the rents which would become due during the unexpired terms of ninety-nine years, was directed to be sold, and that his reversionary interest was not affected.

It was clearly within the power of the court to have decreed, in terms, a sale of said lot 20, and thus to have eliminated the leases and also Blodget's reversionary interest, as Bickley, in his bill of complaint, asked to be done; or to have decreed, in terms, a sale of Blodget's reversionary interest in the lot permitting the leases to stand, but the court did neither. The words of the decree directing a sale of the "ground rents," only, are not at all appropriate for the creation of fee simple estates in the two parts of the lot, Parcels A and B, out of which the ground rents to be sold were to arise. In every instance except that of said lot 20 the decree directs a sale of lots specifically mentioned. The omission of lot 20 emphasizes the point that a sale of the reversion was not contemplated by the decree.

If the suit of Bickley *vs.* Blodget et al., had never been instituted it would have been competent for

Blodget to have assigned to another for a sum agreed upon the rents to accrue during the unexpired terms of either or both of the leases; or he might have agreed with either of his lessees to exonerate the lessee, in consideration of a sum agreed upon, from the annual payment of rents required under the lease for the unexpired term, and in either case the reversion would not have been affected.

> "Rent is incident to the reversion and therefore by a general grant of the reversion the rent will pass, though by the grant of the rent generally the reversion will not pass."
>
> Broom Max., 493, 8th ed.
>
> 3 Wash. Real Property, Sec. 2304, citing Shep. Touch., 89.

> "Severance of the rent from the reversion takes place, not only, when the landlord transfers the reversion without the rent, but also when he transfers the rent without the reversion."
>
> 1 Tiffany, Land. and Ten., 1107, and authorities cited.

> "The lessor or lessors who made the lease and in favor of whom the rent is reserved are the persons entitled to each instalment of the rent, as it falls due, unless, and until the right has become divested out of them by a transfer, voluntary or involuntary."
>
> Ibid., 1100.

> "A general grant of the reversion passes all the leases to which the property is subject, including the rent reserved as incident to the grant.
>
> "But a lessor may assign the rent to become due upon a lease without assigning the reversion; or he may grant the reversion and by special words reserve the rent."
>
> 2 Taylor, Land. and Ten., Sec. 426.

"An order drawn by a landlord, to pay accruing rent to a third person operates as an assignment of the rent; and the tenant is bound to pay to such person, whether he has accepted the order or not."

2 Taylor, Land. and Ten., Sec. 428.

Blodget's right to assign the rents under the leases to Daugherty and Frethy, and to retain the reversion, if the Bickley suit had never been instituted and the right of the court to dispose of the rents by its decree and to leave the reversion in Blodget, being clear, there is no ground for appellees' assumption that the reversion became vested in the lessee through the decree for the sale of the rents, to accrue under said leases, and the transfer of the right to said rents to the lessees, by the purchasers of the same under the decree. The leases were mere chattel interests and the right to the rents to accrue under them could be of no greater dignity, as a property right; hence, no assignment of them by Blodget, or under the decree of the court, could affect the reversion.

The instruments of record set forth in appellees' bill of complaint, of dates later than the decree in the Bickley suit, and upon which appellees base their claim that Willard was the owner of the reversion and of an equitable title in fee simple to said parcels A and B, at the time of his death, transfer only the leasehold interest or the right to the rents, and these were all Willard acquired by said instruments.

The original lessees and their successors in interest have fully enjoyed all the benefits to which they were entitled, in law or in equity, under the leases. All their rights have come to an end through the expiration of the leases and their failure to exercise the privileges given them for a renewal of the leases or for the purchase of

the ground, and for aught that appears in said instruments, appellant, as the reversioner, is entitled to possession of said parcels A and B, and is entitled to proceed in his ejectment suit for the recovery of said parcels.

3. The third erroneous assumption of appellees is "that in any event the purchase by the lessees of the 'rent charge' merged the whole beneficial and equitable estate in the grantors of complainants, and, therefore, that the equitable title to the said premises is vested in complainants" (Bill, par. 13, cl. 4, Rec., p. 12).

The first assumption of appellees that the leases to Daugherty and Frethy were perpetual leases, and that the rents to accrue on them were payable in perpetuity, and the second assumption that the right to them in perpetuity passed to Bickley and to Howe under the decree in the case of Bickley *vs.* Blodget *et al.*, and the proceedings under it have been shown to be baseless, and as the third assumption depends upon the other two, it must fall with them.

The "rent charge" referred to must be taken to mean the rents to accrue under the leases for their unexpired terms, which could exist only for that limited period and there could be no "merger" by which any estate of greater duration could be affected.

No new rights or estates were created by the decree in the Bickley case. The decree and proceedings merely transferred to others an existing right of Blodget to the rents to accrue under his leases for the unexpired terms of ninety-nine years.

The instruments of title referred to in appellees' bill of complaint do not disclose a state of facts to which the doctrine of the "merger" of estates can be applied. The transfer to the holders of the leasehold interests, of the right to the rents to accrue under their leases, created no estate in them in which either the leasehold or reversion could merge or which could merge in either. If the right to the rents and the right to the leasehold

interest had continued to be vested in different persons both rights must cease at the end of the terms of ninety-nine years, and the result could not be different in case both rights became vested in the same person.

If, after receiving a transfer of the right to receive the rents to accrue under his lease, the holder of the lease had seen fit to transfer his lease to another person no reason is apparent why he could not in doing so, reserve the right to the rents for the unexpired term.

Appellees' First, Second and Third Contentions.

Three of the contentions of appelles stated on page 23 of this brief are thus shown to be unfounded, viz:

1. That the leases to Daugherty and Frethy were *perpetual* leases, and that the right to receive rents under them, *in perpetuity*, was sold under the decree passed on Bickley's original bill.

2. That under the law a fee simple passed under the term "ground rents."

3. That the purchase by the lessees of the "rent charge" *merged* the whole beneficial and equitable estate in the grantors of appellees, and therefore the equitable title to said premises (Parcels A and B) is vested in appellees.

It has been further shown that under the mesne conveyances and proceedings referred to in the bill of complaint, the leasehold interests only, under the Daugherty and Frethy leases, and the right to the rents to accrue under them were vested in Isherwood at the date of his deed to Willard and that he conveyed no more to Willard by his deed.

If appellees' first, second, and third contentions were well founded there would be no occasion for their fourth, fifth, sixth, and seventh contentions (Brief, pp. 23, 24). The latter can have relation only to a title acquired by a possession adverse to the reversioner. If the latter be insisted upon, and appellees seem to be reduced to that necessity, it involves an abandonment of the claim of

record title in fee simple, and a reliance upon title by adverse possession as to Parcels A and B.

It is needless to add that a title by adverse possession affords appellees a plain, adequate, and complete defense in the ejectment suit as to said parcels A and B, and that it presents no equitable ground for a change in the forum of litigation.

But the record discloses no ground upon which appellees can base even a claim of title to said parcels by a possession adverse to the reversioner.

Appellees' Fourth Contention.

Appellees' fourth contention that the acts of the parties, successively claiming title, show that it was their intention to deal with a fee-simple title, and they supposed they had done so, is immaterial. (Brief 23).

The contention is based upon an inference of such intention from the fact that those who, prior to Isherwood and Willard succeeded to the right of possession under the leases, and those who acquired the right to the rents to accrue under them, saw fit, in transferring their rights, to adopt forms of conveyance which were appropriate for the transfer of fee-simple estates rather than of chattel interests. It is not evident that the grantors intended by their deeds to do more than transfer their actual interests or to disclaim their tenancies under the leases or to claim title in themselves as against the reversioner, but even if such were the fact the deeds were merely grounds of forfeiture and did not *ipso facto* terminate the leases, but merely made them voidable at the option of the lessor.

> "If the tenant under the lease were to convey the lease in fee to a third party the latter would have no better right to contest the title of the lessor than the lessee himself."
>
> 1 Washburn, Real Property, sec. 748, and authorities cited.

> "But the mere conveyance by the lessee would not of itself operate as a disclaimer, it could only operate as an assignment of such estate as the grantor had."
>
> Ibid., sec. 757.

The American rule in regard to forfeitures under leases is clearly announced in the note to the case of Doe d. Bryan *vs.* Banks, 15 Eng. Rul. Ca., 566-7 (4 Barn. and Ald., 408, 410), where the following quotation from Clark *vs.* Jones, 1 Denio (N. Y.), 43 Am. Dec., 766, appears:

> "It is now held in relation to leases for years, as well as those for life, that the happening of the cause of forfeiture only renders the lease void as to the lessee. It may be affirmed by the lessor and then the rights and obligations of both parties will continue without regard to the forfeiture."

Numerous cases are cited by the annotator in support of the doctrine.

> "It seems well settled that even if the tenant forfeits his estate he does so only at the option of the landlord. If the landlord desires he may overlook the tortious act of his tenant and assert his rights at the end of the term for years or of the life estate."
>
> Jones Land. and Ten., sec. 479, and cases cited.

Blodget, the lessor, delivered the possession of the demised premises to Daugherty and Frethy, respectively, and the possession thus delivered passed in regular succession from one person to another until Willard entered upon it. The possession, having been acquired by virtue of the leases, is attributable to the leases only. The reversioner certainly had the right to so regard the occupation of the premises, and to rest upon the

See, also—

Warvelle on Eject., secs. 115, 116, 459–462.

assurance that it was not competent for those who had obtained possession through the leases to change as against him, the nature of their holdings without giving him notice, at least, of their action. In this view a claim of ownership hostile to the reversioner could only begin to run against him from the time that it was brought to his notice actually or constructively, but even in the case of such notice he was under a disability to act by reason of the fact that he had been deprived of the rent for the residue of the term and could only sue for the possession after the expiration of the leases. In any event, as has been seen, he was not bound to terminate the leases on any ground of forfeiture, on the part of his tenants and might, under the law, overlook forfeitures, and bring his action for possession upon the expiration of the terms of the leases.

It does not appear that the reversioner was informed or that it ever came to his knowledge that Isherwood or Willard or their predecessors in the right to possession under the leases, or in the right to the rents under the decree in the Bickley case, had repudiated his title and themselves claimed to be the owners of the fee.

Appellees' Fifth and Sixth Contention.

Appellees' fifth contention is that Isherwood received fee-simple deeds for the property which he purchased; that he had the title to the same examined by competent lawyers who advised him that he had acquired a good title in fee simple by said deeds; that from the time of his purchases down to his sale and conveyance to Willard he claimed as against the whole world, to own the premises in fee-simple; that he collected rents for his own benefit during all that time from houses upon the ground and made and paid for repairs, and paid all charges and taxes thereon, and that he made and recorded a subdivision of the lot on August 10, 1873 (Brief, p. 24).

Appellees' sixth contention is that Willard bought parcels A and B from Isherwood and received a fee-simple deed therefor, from him, dated May 4, 1882; that he had the titles to the property examined by a title company which reported the same good in fee-simple in Isherwood; that thereupon he entered upon possession claiming as against the whole world a fee-simple title thereto; that up to the time of his death he occupied the premises and every part thereof under said claim of title, and collected for his own benefit rents from the houses which were, and are, thereon; and paid for all repairs on same and all taxes and charges thereon down to the time of his death; and since his death complainants have succeeded to his possession and title and have collected rents, paid for repairs and acted generally as the owners in fee-simple (Brief, p. 24).

The nature of the title acquired by Isherwood and Willard, respectively, under the deeds to them depends upon the legal import of the preceding instruments in the chain of title to the property conveyed by said deeds. If such instruments passed only the leasehold interest in parcels A and B and a right to the rents to accrue under the leases, as appellant contends was the case, then neither Isherwood nor Willard became vested with a fee-simple title under their respective deeds; and the opinions of the lawyers who were employed by Isherwood to examine the titles for him, and the opinion of the title company which was employed by Willard to examine the titles for him, to the contrary, were erroneous.

For the erroneous conclusions, as to the titles, reached by Isherwood and the lawyers employed by him to examine them and the erroneous conclusions reached by Willard and the title company employed by him to examine them, the reversioner was in no way responsible. It does not appear by the bill of complaint that

either Isherwood or Willard sought the advice of the reversioner in regard to their proposed purchases, or that they, or their lawyers, consulted the reversioner in regard to the titles, or that they, or either of them, were misled or influenced in any manner by the reversioner in regard to them. It does not appear by the bill that the reversioner was aware of the intention or purchases of either Isherwood or Willard.

The reversioner held no relation either to Isherwood or to Willard, under which he was in duty bound to know that either was contemplating or had determined to make such purchases, and to warn each of them that he could not obtain a fee-simple title through such purchases.

Isherwood and Willard were each *sui juris*, and the law cast upon each of them, alone, the duty of ascertaining the nature of the title he would obtain. The land records were open to each of them, and to his counsel, for the purpose, and if, upon an examination of them, he and his counsel drew an erroneous conclusion as to the nature of the title which was offered to and accepted by him, each must abide the consequences of the mistake. *Caveat Emptor.* If either Isherwood or Willard did not get what he bargained for and thought he was getting, his remedy, if any, was against his vendor. If he was misled by the report of his agents his remedy, if any, was against them. The import of the land records is plain, as has been shown, and gave full and complete notice of the fact that the fee-simple title was not in Isherwood and did not pass by the deed of the latter to Willard.

The averment of the bill of complaint referred to in the statement of the fifth contention of appellees, that Isherwood from the time of his purchase down to the time of his sale and conveyance to Willard claimed "against the whole world," a fee-simple title to the

premises, the manifestations of such claim being the collection of rents by him for his own benefit, during all that time, from houses upon the ground, and payment of the cost of repairs, and payment of charges and taxes thereon and the making and recording in the Surveyor's office of a subdivision of the lot on August 10, 1873, is immaterial.

It was a matter of indifference to "the whole world," with the single exception of the reversioner, whether said acts of Isherwood were done by him in the exercise of a dominion over the property based upon a lease of it or under a dominion over it based on a claim of ownership in fee-simple. Being in possession under the lease he was bound to pay taxes and for repairs and had the right to collect from his own tenants, and for his own convenience in the use of the property to make the subdivision.

It is not averred in the bill that the reversioner had notice either actual or constructive of said acts, or notice in any way of Isherwood's alleged claim of title in fee. Even if Isherwood had given the reversioner written notice of his claim to ownership in fee, and had thereby given cause for the forfeiture of the lease, the forfeiture would have affected him as lessee only, and the reversioner's rights would not have been impaired. The reversioner, as has been seen, would not have been obliged to enforce the forfeiture and terminate the lease, but might overlook the forfeiture and allow the lease to continue (Brief, pp. 48, 49).

Owing to the fact that the rents to accrue during the unexpired terms of the leases had been severed from the reversion by the sale of the same under the decree in the Bickley case, and satisfaction made to the reversioner by the application of the same to the payment of his debt to Bickley and to the further fact that the right

had become vested in Isherwood to the rents the reversioner was under a disability to sue for the possession until the claim on the rents had ceased by the expiration of the lease.

The same answer is applicable to similar averments of the bill of complaint referred to in the statement of the sixth contention of appellees (Brief, p. 24), as to the entering by Willard into the possession of the premises under his deed from Isherwood claiming "against the whole world" a fee-simple title thereto, and the occupation of the same by him under such claim of title to the time of his death; the collection by Willard of rents from his tenants, the payment by him of taxes and repairs, etc. The averment that in the year 1896 said Willard erected a building upon the rear part of said lot at large cost, which improvements remain up to this time, yielding rents to appellees, is also immaterial.

The tenants under the leases were obliged to erect buildings of a specified kind, but they were at liberty to improve otherwise at their own expense, and to any extent they might deem proper, and of course to collect rents from their tenants. The reversioner was not bound to take notice of the making of such additional improvements or of the reasons which prompted Willard to make them.

It follows that the facts set forth in the fifth and sixth contentions of appellees are immaterial.

The Land Records Were Conclusive Notice to Willard that a Fee-Simple Title to the Lot Was Not Vested in Isherwood.

The averment in the bill of complaint referred to in the statement of the seventh contention of appellees (Brief, p. 24) that Willard had no notice or knowledge of any claim on the part of defendant, or of any other

person or persons, adverse to him prior to the ejectment suit in October, 1903, must be determined against him.

The import of the land records is plain and gave him full and complete notice of the fact that the fee-simple title to the lot was not in Isherwood at the time of his purchase from the latter and that it was in the reversioner.

Wade in his Law of Notice says (sec. 96) that the American Registry Acts—

> "are intended to furnish the best and most easily accessible evidence of the title to real estate, to the end that those desiring to purchase may be fully informed of instruments of prior date affecting the subject of their contemplated purchases."

And (sec. 97)—

> "as a general rule any interest affecting the title which is properly recorded is absolute notice to every one subsequently dealing with the title, irrespective of whether such person has examined the records or even had an opportunity to make an examination. *The presumption of knowledge is conclusive* that he has full notice of any interest, legal or equitable, which is conveyed, incumbered or in any manner affected by the recorded instrument."

And (sec. 310):

> "The doctrine, embodied in the general statement, that a purchaser of realty *takes with notice of every adverse legal claim or outstanding equity* disclosed by the recitals of any one of the papers under or through which he traces his title is of uniform recognition both in this country and Great Britain."

In Meyers, Admr. of Presstman *vs.* Silljacks, 58 Md., 320, Sterrett assigned to Steele, in 1792, the unexpired term of a ninety-nine year lease. Steele died about

1809, and in 1841 a decree in chancery was passed for the sale of his real estate. In the proceedings the leasehold interest was treated as if it was part of the real estate, although in reality but a chattel interest. The deed made by the trustee to Presstman, the purchaser, described the property sold as part of the real estate of the deceased. On a bill filed for a renewal of the lease the question was whether the right to renew had been lost by laches and adverse hostile conduct and proceedings on the part of Presstman. It was urged on behalf of the complainant, his administrator, that Presstman "was misled and deceived by the nature of the decree for the sale of Steele's estate and the deed from the trustee; that these proceedings led him to believe that he was acquiring a fee-simple estate in lot No. 125 and not merely a leasehold interest." What the court says in reply is pertinent to the present case.

> "But in answer to this it may be justly said, he was bound to know that he could acquire, under those proceedings, no other or greater estate than that owned by Steele at the time of his death; and moreover, that upon slight examination of the title upon record, he would have discovered that Steele's estate in the lot was but a mere leasehold. *Of this the law charged him with knowledge.* For as declared by Lord Chancellor Sugden, in Butler *vs.* Port Arlington, 4 Irish Eq., 1, in answer to the position that the tenant was ignorant of the title under which he held, that 'nothing could be more dangerous to the administration of justice than to allow a party after many years enjoyment of an estate, to set up his ignorance of the title under which that estate was held. It is *crassa negligentia* in him if he did not know it; it was his duty to have made himself acquainted with it.' Especially is this the case where the title is all apparent of record, and nothing is necessary to a full disclosure but the simple precaution of an examination."

If Willard had, in fact, by his deed from Isherwood, acquired the fee, and it was subject to a recorded unreleased mortgage, which had been carelessly overlooked, he could not have set up his ignorance of its existence as a defense to it. No more should he be permitted to avail himself in the present case of his alleged ignorance of the import of recorded instruments in his chain of title which showed that the fee was outstanding in another and could not be conveyed to him by Isherwood. Before purchasing from Isherwood it was clearly the duty of Willard to advise himself as to the title of said Isherwood, as it was disclosed by the land records kept for the purpose of enabling him to do so. He knew this and employed agents to examine them. If he, Willard, did not get what he bargained for, or expected to get, his remedy, if any, was against his vendor. If he was misled by the reports of his agents his remedy, if any, was against them. The reversioner was not a party or privy in any way to his transaction with Isherwood and knew nothing of their intentions, understanding or agreement, and in no way influenced the same.

In Duke of Beaufort *vs.* Neeld, 12 Cl. & F., 248, the duke signed a paper consenting to an exchange of land. He did not refer to certain papers in his possession, and he subsequently claimed that he signed under a misapprehension, and that he did not know that the land in question was included. He filed a bill to rescind his consent, and his application was denied. Lord Brougham said:

> "He need not look if he does not choose, but if he does not look he must bear the penalty of being held to have looked, and if he either shuts his eyes or carelessly sees he shall not be allowed in a court of law or equity to say 'it is a mistake. I never knew it.' "

The doctrine established by the above citations is that where it is a duty to inquire, it is a duty to learn,

and that a party will be charged with knowledge of all facts which he could have ascertained upon proper inquiry, whether he makes the inquiry or not. Hence, Willard must be charged with knowledge of the fact that he acquired by his deed from Isherwood nothing more than the leasehold interests in said parcels A and B, and the right to the rents to accrue under the leases, and that he entered upon the possession of the premises under the leases, and he and his devisees are estopped from denying it.

Appellees' Eighth Contention.

The averment of the bill first referred to (A), in the statement of the eighth contention of the appellees (Brief p. 25), that complainants believe they have "a good defense against the said ejectment" is certainly no reason for depriving the law court of jurisdiction over the suit. The reasons advanced for the further averment that their remedy at law is not as "full, adequate, and complete" as their remedy in equity, are inconclusive and insufficient. It is averred that "if appellant's claim that the term 'ground rents' does not import a fee simple, be well founded, then these complainants might be exposed to great delay and expense in resisting said ejectment or ejectments, and yet in the end be compelled to resort to this court *to protect their equitable title*," that is the equitable title in fee simple which was formerly vested in said Blodget and which complainants aver has become vested in them by virtue of the mesne conveyances set forth in the bill.

It has been demonstrated, as to parcels A and B, that the only interest which became vested in Willard by virtue of the deed to him, and of said mesne conveyances and proceedings was a leasehold interest in each, and that said interest ceased before said Willard's death by the expiration of the leases. The bill shows no title,

legal or equitable, in complainants to said parcels A and B. Obviously the complainants have no right to appeal to an equity court for the protection of an "equitable title" which they have not.

Such equitable title could only have become vested in them upon the theory that by the sales of the "ground rents" to accrue under the leases made to Daugherty and Frethy a fee simple passed to the purchasers, under the decree in the Bickley case. If the fee simple did not so pass, no other state of facts is presented by the bill, under which an equitable title in fee simple to said parcels A and B could arise or become vested in complainants.

In one other way only could a title in fee have become vested in complainants, or in their devisor, and that title would be a *legal* and not an *equitable* one, viz: through adverse possession. Such legal title is not in terms claimed by the bill, presumably, for the reason that it would not appeal to the equity court as a ground for interference with the case at law, inasmuch as complainants could have the full benefit of it, as a defense in the ejectment suit, in so far as said parcels A and B were concerned. It has also been shown that under the circumstances disclosed in the bill the possession originally acquired under the leases and transferred in regular succession to the complainants, did not become adverse to the reversioner (Brief, pp. 47 to 50).

Appellees Not Entitled to Exercise the Options For Renewal and for Purchase Given by the Daugherty and Frethy Leases.

The averments of paragraphs B, C, and D in the statement of the eighth contention of the appellees involve the application of the doctrine of specific performance to the case, with respect to the options for renewal of the leases and for the purchase of the demised premises,

given by the leases, and the right of appellees to invoke the doctrine upon the showing made by the bill.

Complainants in said paragraph B merely refer to the provisions, for the acquisition of the reversion in fee upon payment of sums stated and in their third prayer ask the court to determine what sums of money shall be paid by them to the defendant, for the *naked* reversion, if the court should be of the opinion that defendant, and not they, is invested with it. The leases had each expired by their own limitation and the right to exercise the options for renewal and for purchase, being limited to the terms of the leases, had expired with them. How, upon the assumption that the reversion was in appellant, it could be "*naked*" after the expiration of the leases, without the exercise of the options for renewal or for purchase, complainants do not explain, otherwise than as their meaning, in the use of the word, is to be inferred from their contention that the leases were *perpetual* leases with rents to accrue under them in *perpetuity*, and that under the decree in the Bickley case the rents had been sold in perpetuity and that under such sale a fee simple had passed to the purchaser, or at least, that when the right to the rents became vested in the holders of the leasehold interest, there was a "merger" of estates which created a fee simple in the tenants under the leases.

It has been shown that the contentions are untenable; that the leases were each for fixed and definite terms of ninety-nine years with a mere possibility and not a certainty of a future demise and that only the rents to accrue under the then existing terms of ninety-nine years were sold under the decree in the Bickley case, and that the doctrine of merger of estates was not applicable when the right to the rents became vested in the tenants under the leases. On pages 36 to 39 of the brief the duration of the leases is discussed, and on pages

39 to 45 the sale of the ground rents, and on pages 46 and 47 the question of merger.

The language of the Daugherty and Frethy leases, which is descriptive of the terms created, is clear to the point that single terms only of ninety-nine years each and no longer were created by each lease; and the language of the decree directing a sale of the ground rents is clear as to what it was intended should be sold.

The lease to Daugherty is "from this, the 13th day of April, above mentioned, for and during and unto the full term of ninety-nine years from thence next ensuing and fully to be completed and ended." The lease to Frethy is "from this 14th day of April, above mentioned, for and during the full term of ninety-nine years thence next ensuing and fully to be completed and ended."

The decree directs the sale "of certain grounds reserved by the said defendant Blodget by indenture made between the said Samuel Blodget of the one part and Edward Frethy of the other part, one of the defendants aforesaid, bearing date on the 4th (14) day of April, 1801, and of certain other ground rents reserved by the said Samuel Blodget by indenture made between the said Samuel Blodget of the one part and James Daugherty one of the said defendants of the other part, bearing date on the 13th day of April, 1801, be also sold for the purpose aforesaid."

It was essential under the leases that the lessee should avail himself of the privilege of election, under the options during the term, and the lessee under each of the leases having failed to exercise the privilege during the term, and the lessor having been in no manner responsible for the lessees' failure to do so, the privilege has been lost.

> "If there be a covenant to renew at the election of the lessee he must make that election before the

lease terminates and a mere continuance of possession will not operate as an election to renew."

1 Parsons on Contracts (7th Ed.), bottom of p. 532.

"Where the lease does not specify the time within which the option to purchase must be exercised, the lessee is still required to exercise his option, if at all, before the expiration of the term."

A. & E. E. of Law, vol. 11, p. 611, and authorities cited.

"Where parties have entered into written engagements with express stipulations, the presumption is that having expressed some they have expressed all the conditions by which they intend to be bound under the instrument."

1 Washburn, Real Property, sec. 668.

"There is nothing of more importance than that the ordinary contracts between man and man, which are so necessary in their intercourse with each other, should be certain and fixed and that it should be certainly known when a man is bound and when he is not. There is a difficulty to comprehend how the essentials of a contract should be different in equity and at law. . . . If a given default will not do, what length of time will do?"

Lloyd *vs.* Collet, 4 Bro., 469, 4 Vesey, 589n.

Chancellor Kent, in Benedict *vs.* Lynch, 1 Johns., Ch. 370, quotes the above language of Lord Loughborough in Lloyd *vs.* Collet and says that it would be impossible for him to add to the perspicuity or the energy of the reasoning.

"Baron Alderson said in Hipwell *vs.* Knight, 1 Y. & C., 415: 'I do not see, therefore, why, if the parties choose, even arbitrarily, to stipulate, pro-

> vided both of them intend to do so, for a particular thing to be done at a particular time, such a stipulation should not be literally carried into effect in a court of equity. That is the real contract. The parties had a right to make it. Why, then, should a court of equity interfere to make a new contract which the parties have not made?' "
>
> Fry on Spec. Perf., 513n.

Where a valid sale of land has been entered into, binding both parties, the purchaser in equity is considered the equitable owner. In such case it is said that in equity time is not of the essence of the contract; but in the case of an option to buy the rule is different and the time limited is of the essence of the contract.

In 1 Paige on Contracts it is said that for practical purposes agreement, in contract law, may be considered as created solely by offer and acceptance, section 23; that the time fixed by the offer controls, section 39; and that acceptance completes the contract, and the offer is not binding until acceptance, section 41; and that failure to accept is not equivalent to acceptance, section 42; that the term "unilateral" is used "to indicate a promise which has not been so accepted by the promisee as to impose any liability, or which does not by its terms impose any liability on him," section 17.

Waterman *vs.* Banks, 144 U. S., 394, 401, was a bill for specific performance of an option given for the purchase of the ground to be exercised within a time limited. After stating that the instrument contained no word or clause indicating a purpose to create, *as of its date*, the relation of purchaser and vendor between the parties, Mr. Justice Harlan, in delivering the opinion of the court, said:

> "It gave the former, his heirs, administrators, and assigns an option to demand a conveyance within a prescribed period thus making time of

> the essence of the agreement. If a conveyance was not demanded within that period, the obligation of R. W. Waterman to make one ceased altogether. Such was the contract; and the suggestion that the transposition of the words 'at any time,' was a mere clerical error, to be corrected by construction, is simply an appeal to the court to make for the parties an agreement they did not choose to make for themselves, and then decree its specific performance. No principle of equity would support such a decree. Hepburn *vs.* Dunlop, 1 Wheat., 179. The demand for a conveyance within a given time—looking alone at the writing—was made by the parties a condition precedent to the acquisition by J. S. Waterman of an interest in the property. R. W. Waterman did not agree to convey except upon the performance of that condition precedent. The condition being lawful it is not competent for the court to dispense with its performance."

Numerous cases are cited in support of the ruling.

In Coleman *vs.* Applegarth, 68 Md., 27 (1887), an option to buy land, on or before a certain day, was given for a consideration, and before the expiration of the time the owner agreed, verbally, to extend the time. After the expiration of the time named in the option, and before the expiration of the verbal extension, the owner sold. The holder of the option prayed for specific performance.

Alvey, Chief Justice, in delivering the opinion of the court says:

> "The contract set up was not one of sale and purchase, but simply for the option to purchase within a specified time and for a given price. It was unilateral and was binding upon one party only. There was no mutuality in it, and it was binding upon Applegarth, *only for the time stipulated for the exercise of the option.* After the lapse of the time given there was nothing to bind him

> to accept the price and convey the property, and the fact that this unilateral agreement was reduced to writing added nothing to give it force or operative effect beyond the time limited for the exercise of the option by the plaintiff."

He further says (p. 28):

> "Here time was of the very essence of the agreement, the nominal consideration being paid the owner for holding the property for the specified time, subject to the right of the plaintiff to exercise his option whether he would buy or not. When the time limited expired the contract was at an end and the right of option gone, if that right has not been extended by some binding agreement that can be enforced."

Codding *vs.* Wamsley, 1 Hun, 585, was for specific performance. A lease had been granted upon consideration and containing a covenant that at any time within a period specified appellant might become the purchaser and owner at a price stated. The privilege was not availed of in time. The claim was made that time was not of the essence of the contract.

Gilbert, Judge, in delivering the opinion of the court said:

> "The court is now asked to say that the time specified is not of the essence of the contract and that the option may be exercised after such time. We can not accede to that proposition. It would in effect make a new contract for the parties. . . . The plaintiff not being bound to purchase, it would be inequitable to hold the defendant bound to sell after the time fixed by the contract, for by so doing the defendant would be held to a performance, if disadvantageous to him, and yet, if advantageous to him he could not compel a performance by the plaintiff. . . .
>
> "There being nothing in the nature of the contract contrary to law or equity we ought to give

it effect accordingly. And such is the rule governing the jurisdiction of the court in this class of cases. It is stated in Story's Eq. Jur. (sec. 777a, 11th ed.), 'but notwithstanding the rule is well established in courts of equity, that time will not be regarded as indispensable in regard to decreeing specific performance of contracts for the sale of lands on the one side and the actual purchase on the other, it is different where the contract gives a mere election to purchase upon certain conditions.' . . .

"If the referee had found that the defendant either caused or sanctioned or authorized plaintiff's default the case might have been different."

Codding *vs.* Wamsley was affirmed in 60 N. Y., 644.

"When the time for acceptance is expressly limited by the proposer, which it is always within his power to do, the proposal falls to the ground at the expiration of that time unless sooner accepted."

Wade, Law of Notice, sec. 378.

"When there is a want of mutuality in the obligation arising from the transaction, in equity as well as at law, time is of the essence of the contract."

Fry on Spec. Perf., 513n.

✠ **The Question of Laches.**

The complainants seem to think that the case is one which can be brought within the jurisdiction which is exercised by courts of equity, to relieve under some circumstances, in cases of forfeiture for breach of covenant. But here there has been no breach of covenant on the part of either lessor or lessee.

Neither title to nor right of property in the reversion was vested in the lessees and they forfeited none by their failure to exercise the options within the time limited.

✠ **See, also—**

Kelsey *vs.* Crowther, 162 U. S., 407.
Pomeroy, Spec. Perf., sec. 387.
Pomeroy, Eq. Jur., sec. 807.

The lessees' right to a renewal of the leases and their right to acquire the demised premises depended on the precedent condition that they should be exercised within the time stipulated in the leases.

In Renound *vs.* Daskam, 34 Conn., 516, the tenant allowed the time to expire within which he might have demanded a renewal of his lease. He was served with notice to quit and then prayed for a renewal. It was held that he was too late. The court said:

> This is not a case for forfeiture for non-payment but a case where the petitioner *neglected* to perform the condition on which his right to another term depended."

After setting forth in paragraph 14 (Rec., pp. 13, 14), that the defendant claims that the words "ground rents" do not import a fee simple; and that the lessees under said leases had the right to acquire the reversion in fee at the prices stated; and that "the right to receive rents in perpetuity" was sold under the decree in the Bickley case, and that a fee simple was created through the doctrine of "merger" complainants say:

> "And the complainants aver in this connection that they have been guilty of no laches in the premises."

The scope of this averment is vague. It is not stated what acts or defaults are claimed to be free from the imputation of laches or whether they occurred before or after the expiration of the leases. If it be intended that Willard, the devisor of complainants, was innocent of laches (which is but another name for negligence) in his transactions with Isherwood, the position has already been answered. When the leases expired without the exercise of either the option of renewal or that of purchase the lessee's right to exercise either ceased, and what was done or omitted by him or by the complainants subsequent to such expiration is immaterial.

Certain reasons are assigned in support of the averment that complainants are not chargeable with laches (Rec., pp. 13, 14), which ignore the great primary mistake made by Willard, their devisor, in 1882, of assuming, as alleged in the bill, and in disregard of the clear showing made by the land records, that he was obtaining a fee simple title by his deed from Isherwood, when, in fact, all that Isherwood could convey to him was the unexpired terms of the leases; and his further failure from 1882 to 1903, two years after the expiration of the leases, to ascertain the true nature of his interest in the lot. The duty being incumbent on him to ascertain from the land records the true nature of Isherwood's title, he can not be excused for his failure to do so, the defendant being in no manner responsible for it.

Even in the case of a breach of covenant which is caused by ignorance of the existence of the covenant, due to the fact that the lessee neglected to refer to the lease which contained it, before doing the act which constituted the breach, a court of equity will not relieve against a forfeiture.

In Barrow *vs.* Isaacs, 15 Eng. Rul. Cas., 770, there was a lease for years which contained a covenant by the lessees that they would not underlet without the consent of the lessor in writing, and a provision that the lessor might re-enter if the lessees fail to perform the covenant. The lessees underlet without the lessor's consent. The underlease was prepared by the lessees' solicitor, who neglected to look at the head lease. Held, that the omission to ask the lessor's consent was not a mistake in respect of which the court would grant equitable relief against the forfeiture.

Kay, L. J., in his opinion (p. 776), cites Hall *vs.* Barclay, 18 Vesey, 56, in which Lord Eldon decided that it had always been held that equity would not relieve merely on the ground that it could give compensation

upon any covenant in the lease, except that for non-payment of rent. He also cites Beauchamp *vs.* Winn, L. R., 6, H. L., 223, in which the Lord Chancellor said:

> "This is not a case of mistake, but of ignorance and of ignorance resulting from a party's own omission to avail of information within his power."

In Thiebaud *vs.* Bank, 42 Ind., 212, the court, in its opinion, quotes with approval from 1 Platt on Leases as follows:

> "And it is clear that ignorance of a man's right conferred by an instrument actually in his possession or power, where the other party is consequently innocent of concealment or of any conduct contributing to keep him ignorant of its contents can not excuse the performance of any conditions imposed on the person claiming under the instrument."

Considered as a bill for the specific performance of the covenants, for renewals of the leases, and for the acquisition of the demised premises, the application should be denied. It is subject to the fundamental infirmity of disclosing no contract between the reversioner and the appellees or Willard, their devisor, in respect of the matter.

The reasons assigned in exoneration of complainants from an imputation of laches are based on conditions alleged to have existed after the bringing of the ejectment suit against Willard and are as follows:

1. That Willard had no notice, or even suspicion, that there was any defect in his title or of adverse claim prior to October 8, 1903, when the ejectment suit was brought against him (Bill, par. 10, Rec., p. 11).

The land records disclosed fully the fact, as has been shown, that the fee was not in Isherwood, from whom he purchased; that he did not advise himself of their import was his own fault, and not that of the reversioner.

2. That when he first learned of the claim of the defendant he, Willard,was in a bad state of health, suffering from a chronic disease, which caused his death.

3. That it was difficult for him to find his papers, including the abstracts of title, on the faith of which he bought the lot in question.

4. That it was not until the summer of 1905 that he was able to learn the residence of Isherwood, from whom he bought, and whose deposition he took in the ejectment suit in 1905.

5. That "it was not until November, 1905, that complainants could get from Baltimore, in which the system of 'ground rents' has for a long time obtained, information as to the customs there in existence for more than a century as to the legal status of said 'ground rents' and the interpretation of said phrase among persons therewith conversant."

It is obvious that the predicament of Willard, as above disclosed, his illness excepted, is due, from the showing made by the bill, to his original erroneous assumption of a fee-simple title in Isherwood. What he learned of the special customs in regard to ground rents in the city of Baltimore could throw no light upon a matter which was obviously not doubtful. The meaning of the term, as used in the leases to Daugherty and Frethy, and in the decree for the sale of them in the Bickley case being clear, no custom in force in Baltimore or elsewhere could be accepted as a rule for a different interpretation.

Full information on "Ground Rents in Maryland" is given in a treatise published by Lewis Mayer in 1883, and on the "Law of Ground Rents in Pennsylvania," by Richard M. Cadwalader, published in 1879, but no light is to be obtained from either on the question of the meaning of the term as used in the leases or in the decree, or upon the question of the right of complainants to

exercise at the present time the options for renewals and of purchase of the demised premises given in the Daugherty and Frethy leases. That must depend upon the principles of law in this jurisdiction in respect of such contracts.

6. That complainants, since said Willard's death, "have been diligent in following up the sources which had come to his knowledge." It is not shown that the nature of the legal situation has been affected in any manner by their diligence in that respect.

The Case of Banks Against Haskie.

(45 Md., 207)

The principles of the common law as applied to contractual relations, which prevailed in Maryland on February 27, 1801, are reflected in the foregoing citations. Congress by act of that date assumed jurisdiction over the District of Columbia and the jurisdiction of the State of Maryland ceased over that portion of the District which was ceded by the State to the United States.

Neither by statute nor judicial decision of the State, were said principles affected in their application to leases until the decision in 1876 of the case of Banks *vs.* Haskie, when a departure took place and a new rule was applied to options for renewals and for purchase in cases of leases for ninety-nine years, renewable forever, conceded to be due to local conditions and customs in the city of Baltimore.

In Banks *vs.* Haskie, relied on by appellees, the bill was for specific performance of a covenant for the renewal of a ninety-nine-year lease renewable forever, where the lease had expired and a renewal had not been demanded by the tenant within the time limit.

The court says:

> "This character of tenure is so far as we know among the States peculiar to Maryland. It has

> not been generally adopted so far as we are informed in any other State. . . . A large city has been built and improved, and a majority of the real estate in Baltimore is now held under it."

The action of the court below in decreeing a specific performance of the covenant to renew was affirmed, the court declining to be bound by or to follow the decisions of the English courts. It was held, nevertheless, that in such cases, as in others, inexcusable negligence would bar relief; that without explanatory circumstances there would have been a strong case of laches which would have barred relief. It appeared that the lessee might have been misled by certain acts of the lessor.

In Meyers *vs.* Siljacks, 58 Md., 319, the case of Banks *vs.* Haskie was followed so far as principles were concerned, but the prayer for specific performance was denied on the ground of laches and "because all right and title of the reversioner" had been "openly denied and utterly set at defiance" by the tenant. In this feature the case resembles the case at bar.

The contracts between Blodget and Daugherty and Frethy, manifested by his leases to them of April 13 and April 14, 1801, respectively, were entered into by the parties with regard to the law as it existed and was understood at the date of the leases, and not with regard to a different law announced by the decision in Banks *vs.* Haskie, three quarters of a century later, and based upon considerations of public policy at that time. But even under the decisions in Banks *vs.* Haskie and Myers *vs.* Silljacks, appellees are not entitled to exercise the options for renewal and for purchase given by the Daugherty and Frethy leases.

The judicial decisions of Maryland after the cession, not in accordance with the law as it was at the time of

the cession, are not authoritative as precedents. It was said in Morris *vs.* United States, 174 U. S., 240:

> "The decision in Brown *vs.* Kennedy was not made till a quarter of a century after the cession by Maryland to the United States and seems to have been a departure from the law as previously understood and applied, both during the colonial times and under the State prior to the cession. . . . Of course, the recent decisions of the courts of Maryland, giving to the statutes of that State a construction at variance with that which prevailed at the time of the cession can not control our decision as to the effect of those statutes on the territory within the limits of the District of Columbia since the legislative power has become vested in the United States. Ould *vs.* Washington Hospital, 95 U. S., 303; Russell *vs.* Allen, 107 U. S., 163, 171; De Vaughn *vs.* Hutchinson, 165 U. S., 506."

Speaking of the act of February 27, 1801, this court said in Geoffroy *vs.* Riggs, 133 U. S., 258, 265:

> "The language of the act is 'that the laws of the State of Maryland as they now exist, shall be and continue in force in that part of said District' which was ceded by that State to the United States and by them accepted. 2 Stat., 103, Ch. 15, Sec. 1.
>
> "A part of these laws was the common law," etc.

Conclusion.

It is respectfully submitted that in no defensible view of the case can the decree of the Supreme Court of the District of Columbia, or that of the Court of Appeals affirming the same, be sustained.

The averments of paragraph 11 of the bill (Rec., p. 11) as to the "Blodget Claim," so called, are *ex industria;*

they are utterly irrelevant to the complainants' case, and must fail to accomplish the result intended—that of discrediting the position of appellant. It can not be contended that the matter contained in said averments deserve any consideration as facts well pleaded; that they have any evidential value or are admissible evidence.

The case of Johnson *vs.* Van Wyck, 4 Appeals D. C., 294, to which reference is made in that paragraph, was an ejectment suit brought by Johnson, trustee, by virtue of certain deeds and instruments to which the heirs of Blodget were parties. It appears from the report of the case that it was not decided, upon the merits of the title of the heirs of Blodget to the ground in dispute, but was decided upon the technical ground that it could not be maintained because a certain agreement, which had been entered into by them was champertous and against public policy.

At the close of the opinion (p. 328) it is said:

> "We are not unmindful of the injury which may be suffered by the heirs of Samuel Blodget through our judgment, if indeed they have a good title to their land, which may be affected only by adverse possession. But the injury is the result of their own deliberate conduct. Public policy looks beyond and far higher than the mere interests or inconvenience of the parties."

In the body of the opinion (p. 325) it is said:

> "If we hold them barred of their right to recover in this action, the heirs of Samuel Blodget have themselves alone to blame. It may be added, too, that dismissing this action will not bar any action they may see proper to maintain, when they shall have withdrawn from the illegal contract with Lorin Blodget and his associates."

The title of appellant in the present case is free from the objections urged in the case of Johnson *vs.* Van Wyck.

In conclusion, it is respectfully submitted that the complainants' bill, and the exhibits thereto, fail to show that the right of the defendant to maintain the ejectment suit is affected by any equitable considerations whatsoever, and that the bill is, in fact, "not even a colorable disguise for changing the forum of litigation."

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Office Supreme Court, U. S.
FILED
DEC 6 1912
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 71.

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD ET AL., DEVISEES IN TRUST UNDER THE WILL OF CALEB C. WILLARD, DECEASED.

BRIEF OF KATE WILLARD BOYD ET AL., APPELLEES.

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SUBJECT INDEX OF BRIEF.

	Page.
Statement of the case	1
History of judicial proceedings in case	2
General nature of the bill	3
Detailed consideration of contents of bill and exhibits	6
Paragraph 1 of bill, averments of citizenship of plaintiffs	6
Paragraph 2 of bill, averments of citizenship of defendant	6
Paragraph 3 of bill, averments of title of plaintiff's devisor to lot 20, square 254, Washington City, D. C.	6
Paragraph 4 of bill, averments that plaintiff's devisor died seized of said lot 20, and that his devisees succeeded to his title	7
Paragraph 5 of bill, history of ejectment suits brought by Camp, defendant to bill, against plaintiff's devisor	7
Paragraph 6 of bill, origin of title to lot 20, square 254	8
Plat of parcels A, B, and C of lot 20	10
Leases of parcels A, B, and C.	11
Judgment creditors bill of Bickley *vs.* Blodgett	12
Sales under this bill	14
Conveyances by trustees of court	14, 16
Supplemental bill of Bickley	18
Sale of parcel C and conveyance of same to purchasers	20
Chain of title to parcel A	21
Chain of title to parcel B	23
Chain of title to parcel C	26

Page.

Paragraph 7 of bill, title to parcels A, B, and C united in Isherwood 26
Paragraph 8 of bill, Willard acquires title from Isherwood 27
Paragraph 9 of bill, Willard makes improvements .. 28
Paragraph 10 of bill, no notice of Blodgett claim .. 28
Paragraph 11 of bill, history of Blodgett's claim .. 28
Paragraph 12 of bill, Camp's claim to be assignee of Blodgett's heirs 29
Paragraph 13 of bill, claims of plaintiffs 30
Paragraph 14 of bill, statement of claims of plaintiffs to equitable relief 31
Prayers of bill: Prayer 1, for process and injunction *pendente lite* 33
Prayer 2, for permanent injunction 33
Prayer 3, for relief in alternative by renewal of leases, etc 33
Prayer 4, for further relief 34

Argument 34

Proposition I.—Robert S. Bickley intended by the judgment creditor's bill which he filed against Samuel Blodgett et al., on October 9, 1802 (Rec., p. 110), to subject all assets of his judgment debtor, Samuel Blodgett, to the lien of his judgment 34
Proposition II.—The sale of the ground rents of parcels A and B was the sale of Blodgett's reversion 36
Proposition III.—The conveyance of the usufruct of a property imports the conveyance of the ownership thereof 42
Proposition IV.—The appellees and those under whom they claim have had adverse possession of lot 20, claiming title thereto as against all the world, from the time of the sales and conveyances under the Bickley chancery suit 43

Page.
Proposition V.—The opinions of title examiners sustain the claim of the appellees..... 54
Proposition VI.—The long continued possession of the appellees and of their grantors warrants presumptions of grants and conveyances from original lessees..... 56
Proposition VII.—Should this honorable court determine that the reversions in fee did not pass to the purchasers under the decree of the court in Bickley's judgment creditor's bill, then the plaintiffs are entitled to the aid of a court of equity to enforce a renewal of the original ninety-nine year leases, and also to exercise the rights of purchase therein given..... 57
Proposition VIII.—The double aspect of the bill is proper..... 58
Proposition IX.—The bill presents a case within the jurisdiction of a court of equity..... 61
Proposition X.—As the defendant has elected to stand upon his general demurrer the decrees below overruling the same must be sustained if any ground of equitable jurisdiction exists in the bill or any part of it..... 64

Appendix..... 65
Opinion of Edgar S. Bevans, the chief title examiner of the Title Guarantee and Trust Company, of Baltimore, Maryland.....65–86
Signification of ground rents..... 66
Facts of case..... 67
History of ground rents in Maryland..... 72
Right to renewal of lease in equity..... 83

ALPHABETICAL LIST OF ALL CASES REFERRED TO.

Page.

Abrahams *vs.* Sheehan.....66, 70, 76
Anderson *vs.* Sweet 75, 85
Avery *vs.* Kellogg 61
Banks *vs.* Haskie.....36, 57, 74, 75, 81, 85
Bickley *vs.* Blodgett..... 12
Camp *vs.* Boyd 2, 35, 58
DePeyster *vs.* Michael..... 43
Doe, Lessee of Poor, *vs.* Considine..... 54
Fenn *vs.* Holmes 84
Fields *vs.* Helms..... 61
Foster *vs.* Cook..... 61
Holland *vs.* Challen..... 64
Hooper *vs.* Shimer..... 84
Jones *vs.* Rose 39, 76, 81
Johnson *vs.* Van Wyck 29, 62
Kerry *vs.* Derrick..... 43
Langstraat *vs.* Nelson..... 63
Leonard's Lessee *vs.* Diamond..... 82
Lewen *vs.* Stone..... 60
McClanahan *vs.* Davis..... 56
McComas *vs.* Bradford..... 73
McConnell *vs.* McConnell..... 61
Myers *vs.* Silljacks..... 37
Ogle *vs.* Reynolds 38, 39, 79, 81
Pacific R. Co. *vs.* Missouri P. R. Co..... 64
Parker *vs.* Plummer..... 43
Pullman Palace Car Co. *vs.* Central Transportation Co. 59
Rapier *vs.* Paper Co..... 60
Ricard *vs.* Williams..... 56
Sharon *vs.* Tucker..... 64
Sheirburn *vs.* Cordova..... 84
Stewart *vs.* Masterson..... 64
Taylor *vs.* Taylor..... 74
Trustees of the Poor *vs.* Jennings..... 49
Wilhelm's Appeal..... 61
Willison *vs.* Watkins..... 44
Winter *vs.* White..... 82

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 71.

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD ET AL., DEVISEES IN TRUST UNDER THE WILL OF CALEB C. WILLARD, DECEASED.

BRIEF OF KATE WILLARD BOYD ET AL., APPELLEES.

I.

STATEMENT OF THE CASE.

This is an appeal by Joseph Parker Camp, the appellant, from a final decree of the Court of Appeals of the District of Columbia (Rec., p. 233), passed on the 10th day of May, 1910, affirming a final decree of the Supreme Court of the District of Columbia (Rec., p. 216), passed on the 28th day of December, 1908, in an equity cause therein pending numbered 25,974, Equity Docket, wherein the present appellees were plaintiffs and the present appellant was defendant.

History of Judicial Proceedings in Case.

The original bill in equity in that cause was filed in the Supreme Court of the District of Columbia on the 22d day of January, 1906, and is set forth in full in the record (Rec., pp. 1–15).

Sundry proceedings were had which resulted in the amendment of the original bill by the incorporation therein of certain exhibits, in addition to those originally set forth.

All of the exhibits to the said bill are contained in the record from page 16 to page 209, both inclusive.

On the 19th day of October, 1908, the defendant (appellant here) filed a general demurrer to the original bill as amended (Rec., p. 210).

The cause was argued upon this demurrer at the December, 1908, special term of the Supreme Court of the District of Columbia, and on the 16th day of the same month Mr. Justice Barnard filed his opinion overruling the demurrer (Rec., pp. 211–216). The defendant elected to stand upon his demurrer and thereupon on December 28, 1908, Mr. Justice Barnard signed the final decree which is the subject of this appeal (Rec., p. 216).

Thereupon the defendant prayed an appeal to the Court of Appeals of the District of Columbia.

This appeal was argued in that court at the January term, 1910, and on May 10, 1910, the Court of Appeals passed a final decree affirming the decree of the lower court (Rec., p. 233).

The opinion of the court was delivered by Mr. Justice Robb, and will be found in the Record at pages 226 to 232, both inclusive. See *Camp* vs. *Boyd*, 35 App. D. C., 159.

On May 13, 1910, the defendant was allowed an appeal to this honorable court and by appropriate proceedings he perfected that appeal (Rec., pp. 233–235).

This cause now comes on for hearing upon that appeal, which involves one question only, which is this:

Were the Supreme Court of the District of Columbia and the Court of Appeals of that District right in overruling the appellant's general demurrer to the bill of the appellees?

It is well settled that the court will overrule a general demurrer to a bill in equity if that bill can be sustained upon any ground of equitable relief contained in it or in any of its parts.

Further, a general demurrer to a bill in equity concedes that all facts well pleaded in the bill are to be taken as admitted by it.

Further, all presumptions are to be made in favor of the bill which properly and reasonably arise from those facts.

It is therefore important that the averments of the bill should be carefully examined in detail. Before doing this, however, it will be well to state the

General Nature of the Bill.

The plaintiffs claim to be the owners of the equitable fee simple title to original lot numbered 20, in square 254, in the city of Washington, District of Columbia, the record legal title to which has for more than a century been outstanding. They aver, in support of this claim, that their title originated in the early part of the last century by conveyances, under decree of a court of competent jurisdiction, to certain persons from whom they deraign title by mesne conveyances. They set forth that prior to 1794 one Samuel Blodget purchased said lot from the United States Commissioners but received no deed therefor; that on April 13, 1801, he made a lease of part of this lot to one James Dougherty

for ninety-nine years, renewable forever, with privilege of purchase; that on April 14, 1801, he made a similar lease of another part of said lot to one Edward Frethy; that on April 20, 1804, he made a similar lease of the remaining part of said lot to one Edward Fennell; that by decree of the then Circuit Court of the District of Columbia, the residuary interest of the said Blodget, under the term or designation of "ground-rents" in the parts of said lot leased to Dougherty and Frethy, respectively, was sold and conveyed to persons from whom the plaintiffs deraign title by mesne conveyances; that by supplementary decree of the same court the reversionary interest and "ground rent" of the said Blodget in the remaining part of said lot leased to Fennell were sold and conveyed to a person from whom the plaintiffs deraign title by mesne conveyances.

The plantiffs next set forth sundry mesne conveyances through which the title to 31.11 feet front by the depth thereof of said lot 20 vested in one Benjamin F. Isherwood in 1852 and to the remaining 19.11¼ feet front by the depth thereof, in 1866.

That Isherwood at the dates of his said respective purchases entered upon the premises conveyed to him as aforesaid claiming as against the whole world a fee simple title thereto, received rent from houses which were located thereon, paid taxes, repairs, etc., and made and recorded a subdivision of the said lot 20 and remained in possession as aforesaid until the 4th day of May, 1882, when he sold and conveyed the whole of said premises and improvements to the late Caleb C. Willard, the devisor of the plaintiffs.

That at the date of his said purchase the said Willard received possession of the said premises from the said Isherwood and from that time until his death in 1905

retained said possession, claiming title as against all the world, collecting rents and paying for repairs and taxes. That in 1896 he erected improvements costing many thousands of dollars upon the said lot.

That since his death the plaintiffs as his devisees have succeeded to his title, have maintained possession, collected rents, paid for repairs and taxes, etc., and claimed title adverse to all the world.

That on October 8, 1903, the appellant, Camp, defendant to said bill in equity, claiming as assignee of the heirs at law of said Samuel Blodget, instituted two actions of ejectment as to fractional parts of said lot 20 against tenants of the said Willard, which actions he voluntarily dismissed on the 12th day of February, 1904. That on the same day he instituted an action of ejectment against the said Willard claiming in the same right the whole of said lot, which action was pending at the death of the said Willard. That after the death of the said Willard and on December 22, 1905, the said Camp suggested in said cause the said Willard's death, but took no steps to issue process against the plaintiffs, devisees as aforesaid.

The bill then avers that even if the reversion of Blodget did not pass under the sale of the "ground-rents," and even if the plaintiffs have acquired no title to the lot in question by adverse possession, yet under the terms of the aforesaid perpetual leases, they have the right to a renewal of the said leases for ninety-nine years renewable forever, and also a right to purchase the reversion for the sums mentioned in the respective leases.

The prayers of the bill are in the alternative as follows:

First. That, if the court shall be of opinion that the reversion passed under the sale of the ground-rents or that the plaintiffs have title by adverse possession, the plaintiff in the said ejectment suit be enjoined from

prosecuting the same and from asserting any title to the said lot by any further action of ejectment and from casting any further cloud upon the title of the plaintiffs.

Second. That, if the court shall be of the contrary opinion, it shall decree a renewal to the plaintiffs of the said leases, and, in that connection, shall decree what, if any sums, shall be paid for the extinction of any right of reversion existing in the heirs or assigns of Blodget.

Detailed Consideration of Contents of Bill and Exhibits.

In view of what has been said with respect to the admissions, express and implied, by a general demurrer of the averments of a bill, it will now be necessary to consider in detail the contents of the bill and exhibits. We shall therefore now direct the attention of the court to the several paragraphs of the bill and accompanying exhibits in order as numbered.

1. The first paragraph of the bill avers (Rec., p. 2) that the plaintiffs are all citizens of the United States and residents of the District of Columbia save the plaintiff, George E. Howe, who is a citizen of Massachusetts and a resident of the city of Cambridge, in that State; that the plaintiffs file the bill in their right as devisees in trust under the last will of Caleb C. Willard, late of the said District.

2. (Rec., p. 2) That the defendant, Joseph Parker Camp is, as plaintiffs believe, a citizen of the United States and a resident of the State of Pennsylvania and is sued in his own right.

3. (Rec., p. 2) That the said Caleb C. Willard died in Atlantic City, in the State of New Jersey, where he was temporarily residing on the 2d day of August, 1905, and that he had been for many years a resident of the Dis-

trict of Columbia, which was the place of his last domicile. That he left a last will and testament dated July 12, 1905, duly admitted to probate and record by the Supreme Court of the District of Columbia holding a Probate Court on the 29th day of August, 1905. That by the provisions of said will all of the real estate owned by him at the time of his death was devised to the plaintiffs and to their heirs and assigns in and upon certain trusts which are not material to the purposes of this bill. Exhibit F (Rec., p. 34) is a certified copy of the said will. Its detailed contents are not important for the purposes of this case, save that after pecuniary bequests a residuary devise is made by the following language:

> "All the rest, residue and remainder of my estate, both real and personal of any and every kind and wheresoever situated, of which I shall die possessed, I give, devise and bequeath to the said Kate Willard Boyd, Henry K. Willard and George E. Howe, their heirs and assigns, but in trust, nevertheless," etc.

The will refers to the plaintiff, Kate Willard Boyd, as his daughter, and to the plaintiffs, Henry K. Willard and George E. Howe, as his nephews.

4. The fourth paragraph of the bill avers (Rec., p. 2) that among the real estate owned by the testator at the time of his death were the premises in controversy in this cause, to wit, original lot numbered 20, in square numbered 254, as the same are laid down on the ground plan of the city of Washington, District of Columbia, and that under the said will the plaintiffs became and are seized of whatever title the said testator had at the time of his death to the said lot.

5. (Rec., p. 2) That on the 8th day of October, 1903,

the defendant, Joseph Parker Camp, filed two declarations in ejectment in the Supreme Court of the District of Columbia against William E. Pond and George C. Burgling, each a tenant of the said Willard in which fractional parts of the said lot were sought to be recovered. Of his own motion, however, the said Camp dismissed both of these cases on the 12th day of February, 1904; that on the said 12th day of February, 1904, the said Camp instituted a certain other action of ejectment in the said court against the said Caleb C. Willard, who was then living, as defendant, which action was pending at the time of his, said Willard's, death; that on the 22d day of December, 1905, the attorney of record for the said Camp suggested the death of the said Willard, but issued no process against the plaintiffs as his devisees as required by section 236 of the Code of Laws for the District of Columbia. Exhibit A (Rec., p. 16) is a true copy of the contents of the declaration in ejectment filed in the said last named pending case.

6. The averments of the sixth paragragh of the said bill (Rec., pp. 3–10) are quite voluminous inasmuch as they give the history of the title to the said lot 20 down to the time of its purchase by Benjamin F. Isherwood. The chain of the record title to the said lot begins with its division between the United States Commissioners and David Burns, the original owner of a large tract of land in the District of Columbia in which the whole of square numbered 254 was contained. The story of the foundation and the laying out of the National Capital and of the legislation connected therewith and of the proceedings between the National Government and the original proprietors of the land on which it was built is so familiar that it need not be repeated here. Suffice it to say that in the division between the United States Commissioners and the said Burns the whole of said lot

numbered 20 was allotted to the said commissioners. This was done on the 5th day of October, 1892, as will appear from a copy of the said record of division (facing Rec., p. 110). This lot 20 was subsequently sold by the commissioners to Samuel Blodget, but no conveyance was made to said Blodget, so that he acquired only an equitable title to the said lot, the legal fee simple remaining outstanding. By deed dated January 28, 1794, and duly recorded Blodget conveyed all of his real estate in the said city of Washington, including the lot in question, to Thomas Johnson, Jr., and Thomas Peter, in trust to indemnify the United States Commissioners from all damages on account of what was known as the "Hotel lottery," and for securing the payment of the prizes drawn in said lottery. Exhibit E. (Rec., p. 25) is a certified copy of this deed. It is only necessary to note with respect to this deed that it conveyed whatever title defendant had to the grantees Thomas Johnson, Jr., and Thomas Peter, their heirs and assigns, subject to the provision of defeasance contained therein which was the saving harmless the United States Commissioners from all loss on account of the said lottery and for securing the payment of the prizes drawn therein. It does not appear from the record whether or not the said commissioners were saved harmless, but it does appear, as will be presently seen, that one of the prizes therein referred to was not paid save by the means and in the manner hereinafter shown.

LOT 20, SQ. 254.

F St. North.

x		51.11		x
	19.11½	11.11	20	
	B	C	A	
	EDWARD FRETHEY " dated April 14, 1801.	EDWARD FENNELL " dated April 20, 1804.	JAMES DOUGHERTY Lease, dated April 13, 1801.	
69				

The next averment of this paragraph relates to certain leases of certain parts of the said lot 20 made by the said Blodget as presently hereinafter shown. Inasmuch as the chain of record title will follow the fractional parts into which the whole of the said lot was divided by the said leases it will be convenient to insert opposite to this page of the brief a plan of the said lot showing said fractional parts and the name of the lessee of each of said parts. It will also be convenient to designate by the letter "A" the part of said lot leased to James Dougherty, by the letter "B" the part leased to Edward Frethey, and by the letter "C" the middle part leased to Edward Fennell. On April 13, 1801, Blodget demised the east 20 feet front by the depth thereof of the said lot, being parcel A, to the said James Dougherty. By lease dated April 14, 1801, he demised the west 19 feet 11½ inches front of the said lot by the depth thereof, being parcel B, to Edward Frethey. By lease dated April 20, 1804, he demised the middle 11 feet 11 inches front of said lot by the depth thereof, being parcel C, to Edward Fennell. The first of these leases is Exhibit B and a copy thereof will be found at page 18 of the record. The second is Exhibit C and will be found at page 20 of the record. The third is Exhibit D and will be found at page 23 of the record.

All three of these leases are in substance analogous to, if not quite identical in language with, the 99-year lease, which has been in general use in the city of Baltimore and other parts of Maryland for more than a century and a half, containing the usual covenants, condition for breach of the covenants and for distress. The Fennell lease is somewhat less formal than the other two and contains no proviso for re-entry to annul the lease on default of payment of the rent but simply a provision for entry in order to hold the property until all rent and costs are paid. All of these leases are for the period of 99 years, renewable forever, with right of purchase to

the lessees respectively for the respective amounts in said leases specified. While these leases have not been common in the District of Columbia for more than half a century yet they were in frequent use in said District for many years after the cession by Maryland, and today there are still quite a number of them in existence in the city of Washington.

After the date of the leases to Dougherty and Frethey but before the lease to Fennell and on the 9th of October, 1802, one Robert S. Bickley instituted proceedings in equity in the then Circuit Court of the District of Columbia against the said Blodget and others, the said proceedings being Chancery Cause No. 8, Docket No 1. A certified copy of the original bill in said cause and of the exhibits thereto and of the answers and exhibits and other proceedings, the whole being Exhibit No. A-12 to the present bill, occupy from page 110 of the record to page 179 thereof. This bill is what is commonly known as a judgment creditor's bill. The object of it was to subject all of ~~Dougherty's~~ property to the lien of the plaintiff Bickley's judgment and all of his property was embraced in the bill. A number of conveyances were alleged to have been made by Blodget in fraud of the rights of Bickley as judgment creditor and such conveyances were prayed to be set aside. It was alleged, among other things, in the said bill as follows (Rec., p. 117):

> "And your Orator further showeth unto your Honors that the said Blodget by two deeds, the one dated 4th of April, 1801, to one Edward Frethey of the City of Washington, the other dated the 13th day of April, 1801, to one James Dougherty of the said City, leased, or pretended to lease, to them respectively, parts of lot numbered 20 in Square 254 which is one of the lots hereinbefore mentioned to have been sold in the year 1792 by the Commissioners to the said Blodget but for which he has no title on record and which

> is subject to the claim of your Orator, which said Edward Frethey and James Dougherty your Orator prays be made defendants to this, his bill of complaint."

The prayer of the bill was, among other things, that all of the property mentioned in the bill of complaint, or so much thereof as should be necessary, be sold and the proceeds applied to the satisfaction of the plaintiff's judgment. Answers were filed and other proceedings had which resulted in a decree of the said Circuit Court passed upon the 4th day of October, 1805 (Rec., p. 161). The court apparently found that the leases to Dougherty and Frethey were valid. The decree did not sequestrate the rents to accrue under the said leases, nor did it direct a sale of the terms created by the said leases. So much of the decree as concerned the said leases is in the following words (Rec., p. 162):

> "And it is further ordered and decreed by the authority aforesaid that certain ground rents reserved by the said defendant Blodget by indenture made between the said Samuel Blodget of the one part and Edward Frethey one of the defendants aforesaid of the other part bearing date on the 4th day of April, 1801, and certain other ground rents reserved by the said Samuel Blodget by indenture made between the said Samuel Blodget of the one part and James Dougherty, one of the said defendants, of the other part bearing date on the 13th day of April, 1801, be also sold for the purposes aforesaid."

It will be observed that the plaintiff Bickley, in his bill, treated these leases as void and asked the court to so adjudge them. What he prayed for was the sale of the parts of lot 20 covered by these leases freed from the operation of the leases, which he asked the court to pronounce void and of no effect. The court, however,

conserved the rights of the lessees and ordered the sale of the "ground rents," the court itself using that term. Sale was made under the said decree, and on page 157 of the record will be found a statement of the sales made by Daniel C. Brent, trustee appointed by said decree. On page 159 of the record it is stated as follows: Ground rent on James Dougherty's lease sold for $360 to Henry Pratt. On the same page lower down it is stated that ground rent on Edward Frethey's lease sold for $400 to Robert Howe. On page 167 of the record is found the advertisement by the said trustee of the property to be sold. At page 168 of the record, in the said advertisement, appears the following: "Also several certain ground rents reserved by said Blodget, amounting in the whole to eighty dollars per annum." On page 168 of the record the order nisi of ratification of these sales appears, said order made January 25, 1806. On pages 168 and 169 of the record are contained the orders of ratification of the sales made by the said trustee. On pages 171 to 179 of the record are contained certain reports of the trustees and orders of the court referring to the sales of the said ground rents, among other property, and directing a distribution of the proceeds. At the sale made by Brent, trustee, parcel "A" was bought by Henry Pratt as has been hereinbefore stated. He and one George Budd, who appears to have been interested in said bid of Pratt, assigned their interest in the sale to the plaintiff, Robert S. Bickley, and Brent, the trustee, accordingly conveyed direct to Bickley reciting in the deed the assignment of Pratt and Budd to Bickley. This assignment of Pratt and Budd to Bickley will be found at page 48 of the record. The deed of the trustee Brent to the said Bickley will be found in the record at pages 37 to 42. This deed was made on the 3rd of April, 1807. Thomas Peter, trustee under the deed of trust hereinbefore mentioned, and Thomas Monroe, Superintendent of the

City of Washington, joined with Daniel C. Brent, as trustee, as parties grantors to this deed. The deed recites (Rec., p. 39), the sale of "the ground rent reserved by the said Samuel Blodget by indenture made between him and James Dougherty, one of the defendants, bearing date on the 13th day of April, 1801, to one Henry Pratt," and recites further the assignment to Bickley. The granting clause of the deed (Rec., p. 40) contains the following:

> "That the said Daniel C. Brent doth hereby give, grant, bargain and sell, release and confirm to the said Robert S. Bickley, his heirs and assigns, all the right, title and interest of, in, and to the before-mentioned squares, lots and portions of ground and ground rents in the city of Washington aforesaid which was in the said Samuel Blodget."

Brent, the trustee, further grants to ~~Samuel Blodget~~ Bickley (Rec., p. 40), all the right, title and interest which the said Thomas Peter, deceased, had by virtue of the deed from Samuel Blodget to Thomas Peter and Thomas Johnson, Junior, bearing date on the 7th day of January, 1794, or which the said Thomas Peter hath in any way since that time to the same, or any part thereof, by, through or from the said Samuel Blodget. And also all the right, title and interest which Benjamin Stoddard, Francis Lowndes, Thomas McEwan, William Davidson William Smith, or any of them, or any other of the defendants in the bill of complaint in the cause aforesaid named have to the same or any part thereof or which they or any of them, derived from, by or through, the said Samuel Blodget in any manner since the said 28th day of January, 1794, and all the right, interest and estate which the said Thomas Munroe, the defendant, hath in and to the same, as Superintendent of the City of Washington.

Thomas Peter, who joins as grantor in the said conveyance also grants, releases, and confirms to the said Robert S. Bickley, his heirs and assigns, all right, title, and interest to the said before-described squares, lots, and portions of ground and ground rent which the said Thomas Peter derived in and thereto by virtue of the deed, referred to in the said decree, given by the said Samuel Blodget to the said Thomas Peter and Thomas Johnson, Junior, or which the said Thomas Peter has in any way since that time to the same or any part thereof by, through, or from the said Samuel Blodget.

Thomas Munroe, who joins in the said deed, conveys all the interest which he has to the lots of ground mentioned in the said deed and the ground rents to the said Bickley, his heirs and assigns.

The ground rent on Edward Frethey's lease was sold by Brent, trustee, to Robert F. Howe. On January 15, 1807, Brent, trustee, and Thomas Peter conveyed to Robert F. Howe (Rec., p. 42) the ground rent of parcel B, in the following words (Rec., p. 44):

> "Doth give, grant, bargain and sell, release and confirm to the said Robert F. Howe and his heirs all the right, title and interest of, in and to the said ground rent, reserved by the said Samuel Blodget by indenture made between him and the said Edward Frethey dated on the fourth day of April, 1801, as aforesaid which was in the said Samuel Blodget previous to and at the time of making the said decree and all the right, title and interest therein which the said Thomas Peter derived in and thereto by virtue of the deed referred to in the said decree to have been given by the said Samuel Blodget to the said Thomas Peter and Thomas Johnson, Junior, since deceased, bearing date on the 28th day of January, 1794, on which the said Thomas Peter hath in any way since that time to the same or any part thereof, by, through or from the said Samuel Blodget, and also all the right, title and interest which the

said Samuel Blodget, and also all the right, title and interest which the said Benjamin Stoddard, Francis Lowndes, Thomas McEwan, William Davidson & William Smith, the defendant, or any of them, or any other of the defendants in the bill of complaint in the cause aforesaid named have, in and to the same, or any part thereof, and which they, or any of them, derived from, by, or through the said Samuel Blodget in any manner since the said 28th day of January, 1794, and all the right interest and estate which the said Thomas Munroe, the defendant, hath in and to the same as Superintendent of the said City of Washington."

Thomas Peter, as grantor in the said deed, grants, bargains, and sells, releases and confirms to the said Robert F. Howe and his heirs, all the right, title, and interest in the ground rents so as aforesaid reserved by the said Samuel Blodget which he, the said Thomas Peter derived in and thereto by virtue of the deed hereinbefore referred to, to have been given by the said Samuel Blodget to the said Thomas Peter and Thomas Johnson, Junior, or which the said Thomas Peter has in any way since that time to the same or any part thereof by, through, or from the said Samuel Blodget.

The habendum is: "To have and to hold the ground rents so as aforesaid reserved to the said Robert F. Howe and his heirs."

Edward Frethey, the lessee of parcel B., was made a party to the original bill. He was proceeded against by publication. He did not answer the bill until the 31st of July, 1804, in which answer he set up an assignment of his lots to a certain Frederick Betz. He did not, however, file the said assignment nor did he fix any date to the same. The court appears in its proceedings to have paid no attention to the said alleged assignment and to have regarded Edward Frethey as representing all rights derived under the lease from Blodget to himself. Inasmuch

as the decree for sale did not disturb the rights of the lessee, this becomes an immaterial matter.

As has been seen, the bill in equity of Robert S. Bickley was filed on the 9th day of October, 1802. The Fennell lease was not executed until April 20, 1804. The proceeds of the sale under the original bill were not sufficient to satisfy the judgment of Bickley. Accordingly on the 28th day of May, 1810 (Rec., p. 79), Bickley filed a supplemental bill in which he set forth (Rec., p. 180), that he had lately discovered that Blodget had sundry other property not included in the former bill and decree whereof the said Blodget was seized and to which he was entitled on or before the 28th day of January, 1794, when he executed the deed to Thomas Johnson, Junior, and Thomas Peter, in trust, etc. In this supplemental bill he avers (Rec., p. 180):

> "That the said Samuel Blodget was also, on the said 28th day of January, in the year 1794, seized and possessed of and entitled to sundry lots in the said city, which he afterward let on ground rent, reserving an annual rent for the said property, to divers persons hereinafter particularly set forth, which tenants your petitioner does not wish to disturb or interfere with, but wishes to leave them in the quiet enjoyment of their leases under the said Blodget under the terms and conditions expressed in the said leases respectively, but wishes and prays of this court to direct the ground rents reserved thereon, and the reversionary interests of the said Blodget therein, whatsoever the same may be, to be sold for the benefit of your petitioner, which lots so leased on ground rent are as follows, to wit, eleven feet eleven inches, more or less, fronting on F street north, extending in depth one hundred and fifty-nine feet to an alley, being part of lot No. 20, in square No. 254, leased to a certain Edward Fennell, his executor, etc., for a term of years, renewable from time to time forever, reserving the quarterly rent of $24 dollars, payable to the said Blodget."

The said Bickley prayed (Rec., p. 181) as follows:

> "The premises considered your petitioner prays that the whole of the said property hereinbefore mentioned may by a decree of this honorable court be sold to raise the balance still unprovided for which by this honorable court was heretofore decreed to be due to him," etc.

On the 5th day of November, 1813 (Rec., p. 182), it was decreed that Washington Boyd be appointed trustee to make sale of all and singular the properties mentioned in the supplemental bill filed except square 25. The court further directed (Rec., p. 183):

> "That upon the payment of the purchase money and on the ratification of the sale by this court, and not before, the said trustee shall by a deed or deeds duly executed according to law bargain and sell to said purchaser or purchasers all the interest, claim, and right of said Blodget of, in, and to said property to said purchaser or purchasers in fee simple."

The trustee, Washington Boyd, on June 26, 1818 (Rec., p. 183), reported that in pursuance of the above decree he had made certain sales and that to complete his trust it would be necessary to make deeds to the purchasers under the said decree who had paid the purchase money, but that on account of bad health he would be compelled to leave the District of Columbia, and therefore solicited the court to appoint Major John Davidson trustee for the purpose of making said deeds. The court, in answer to the said petition (Rec., p. 184), on June 26, 1818, appointed John Davidson trustee for the purpose of making said deeds. Accordingly, on the 8th of May, 1818 (Rec., p. 45), the said John Davidson (after reciting that his predecessor, Washington Boyd, trustee, had, pursuant to the power vested in him by the decree of court above mentioned and after due

notice, sold on the 14th day of October, 1816, to one Charles Glover, "eleven feet, eleven inches fronting on F street, north, being part of lot 20, in square 254, leased to Edward Fennell for ninety-nine years, renewable forever under the annual ground rent of twenty-four dollars at and for the sum of four hundred and five dollars and fifty cents, which said sale so as aforesaid made was by the said court on or about the third day of June, 1818, finally ratified and confirmed") conveyed to said Glover the said part of lot 20.

This deed further recites the resignation of the said Washington Boyd and the appointment of the said John Davidson for the purpose of making said deeds of said sales. The deed further recites the payment by Charles Glover of the purchase money and proceeds as follows (Rec., p. 46):

> "Hath bargained, sold and conveyed, and by these presents doth bargain, sell and convey, unto the said Charles Glover, his heirs and assigns forever, all the interest, claim and right of the said Samuel Blodget of, in and to the said pieces and portions of ground in the said city of Washington, to wit . . . part of lot 20, in square 254, fronting 11 feet, 11 inches, on north F street leased to Edward Fennell for ninety-nine years, renewable forever under the annual ground rent of twenty dollars. *Together with the right, privileges and appurtenances* to the same belonging or in any wise appertaining. To have and to hold the said pieces and portions of ground and premises with the appurtenances to the said Charles Glover, his heirs and assigns, forever, to his and their own proper use, benefit and behoof."

From this point on the chains of title to the said parcels A, B and C are different and distinct. The title to the whole of lot twenty did not unite until it vested in Benjamin F. Isherwood before named as follows: William

Redin and George Coover, trustees, conveyed parcel A to Isherwood by their deed dated September 25, 1852 (Rec., p. 60). On the 11th day of May, 1866, by his deed of that date (Rec., p. 86) John F. Ennis, trustee, conveyed parcel B to the said Isherwood. On the 21st day of September, 1852, Ashton S. H. White and others, heirs at law of Abraham Bradley, 3rd, and John S. Hatton and Mary A. Blinco conveyed parcel C to Isherwood (Rec., p. 88).

It will be therefore convenient to take up separately the chains of title to parcels A, B, and C from the time when their respective purchasers, from the trustees appointed by the Circuit Court in the Bickley case, derived title thereto under deeds from the said trustees until the date of the respective conveyances of said parcels to Isherwood.

Parcel A.

Daugherty Lease.

At this point we have the title to parcel A distributed as follows:

First. Reversion vested in Robert S. Bickley.

Second. Leasehold interest vested in James H. Daugherty.

1. Reversionary interest. This was vested in Robert S. Bickley (*a*) by conveyance of Brent, trustee, to Bickley (Rec., p. 37); (*b*) by the fact that Thomas Peter, surviving trustee, united in said conveyance; (*c*) by the fact that Thomas Munroe, superintendent, united in said conveyance. Whether or not the conveyances of Peter and Munroe were, in fact, operative to pass the complete reversionary title of Blodget to parcel A, the court intended that they should be so operative, for in the decree (Rec., p. 161) Peter and Munroe (Rec., p. 164) were specifically ordered to make said conveyance.

Robert S. Bickley by deed dated May 1, 1813 (Rec., p., 52), conveyed to James Daugherty (the tenant) the said parcel A and all the interest and claim of Samuel Blodget therein. This conveyance purported to be in fee simple. The habendum clause (Rec., p. 53) was: "to the said James Daugherty his heirs and assigns forever to his and their own proper use, and no other forever."

Assuming that Bickley possessed a fee simple equitable title under the decree and conveyances hereinbefore recited, this operated as a merger of the leasehold estate of Daugherty, and from that time forward the equitable fee simple was vested in Daugherty. Daugherty, by his will probated July 11, 1826, devised all his property to his wife Mary absolutely; and she, by her will probated August 9, 1830, devised parcel A to William Hayman for life, and after his death to his children and their heirs forever (Rec., p. 54).

By partition proceedings No. 478, chancery rule 4, in the said circuit court, filed March 5, 1847, this property was sought to be sold; and by a decree dated May 18, 1847, in said chancery cause, William Redin, Esq., was appointed trustee to make said sale. On the 20th of October, 1847, in a recital contained in a deed between John Byrne and said William Redin (Rec., p. 58) Redin recited that John Byrne had purchased of him as trustee of the court in the Hayman cause the said parcel A (Rec., p. 58). On the 30th of July, 1847, said Byrne executed a deed of trust to one George Cover upon parcel A to secure William Redin, trustee, for the purchase money of this lot (Rec., p. 57). On February 19, 1848, Byrne executed a further deed of trust to William Redin, trustee, to secure a certain indebtedness (Rec., p. 55). On the 25th day of September, 1852, William Redin and George Cover, trustees, selling under the above deeds of trust, conveyed the said parcel A to Benjamin F. Isherwood (Rec., p. 60).

The plaintiffs further aver that as early as the first of May, 1813, Robert S. Bickley claimed by his deed of that date, hereinbefore referred to, to have bought from Brent, trustee, all of Blodget's title to the premises in question, and from that time onward every mesne conveyance purports to convey a fee simple title.

The last reference of record in relation to the Daugherty lease with respect to parcel A is contained in the deed from Bickley to Daugherty dated May 1, 1813, hereinbefore referred to, and granting in the language already quoted a fee simple title to Daugherty, the former tenant; and the complainants aver that from the time said Isherwood bought said parcel A on September 25, 1852, down to the time of the filing of the ejectment suit aforesaid no adverse claim had been made to parcel A by anyone, and that said Isherwood and his said grantee Willard exercised all acts of ownership with respect thereto, paying taxes thereon, repairs to the buildings thereon, and collecting all rents therefrom.

Parcel B.

Frethey Lease.

At this point we have the title to parcel B distributed as follows:

First. Reversion vested in Robert F. Howe.

Second. Leasehold interest vested in Edward Frethey.

The same remarks which have been made with respect to parcel A apply to parcel B down to this point, save that Frethey made an assignment of his leasehold interest on the 19th of September, 1801, to Frederick Betz (Rec., p. 66). On the 24th of January, 1803, Frederick Betz assigned the same to George Betz (Rec., p. 69). On the 15th of February, 1804, George Betz assigned the same to John Thorp (Rec., p. 71).

This appears to end, so far as the land records show,

the direct title of the lessee, Frethey, under Blodget's lease of parcel B.

On the 17th of August, 1830, the corporation of Washington conveyed parcel B in fee simple to William Dowling, reciting nonpayment of taxes upon said parcel assessed in the name of Robert F. Howe (Rec., p. 73).

On the 30th of May, 1831, William Dowling conveyed to Robert F. Howe, reserving his (Dowling's) leasehold interest in said parcel (Rec., p. 75). There is no more specific description of the leasehold interest referred to by these words.

On the 18th of July, 1835, Sarah Howe and Edward P. Pearson, executors of Robert F. Howe, conveyed to William Dowling, reciting that Robert F. Howe died seized of parcel B conveyed to him by deed dated January 15, 1807, which lot at the time of the making of the said deed was subject to a lease for ninety-nine years, dated April 4, 1801, and that said Howe left a last will dated July 28, 1830, whereby he authorized his executors to sell and dispose of all his estate, real and personal, to pay his debts and legacies; that said will was duly proven, etc., and by said will the grantors and one Thomas G. Howe were appointed executors, but Thomas G. Howe renounced; that the grantors, as executors, sold at auction, November 1, 1834, the premises above mentioned, the grantee then being in possession of said premises under said lease, for the sum of $480, which he has fully paid; and the grantors, as executors, conveyed to the grantee and his heirs all of the right, title, interest, and estate, etc., which said testator had in the premises at and before his decease (Rec., p. 77).

This is the last mention of record of said lease to parcel B.

William Dowling by his will probated October 23, 1852, conveyed his estate to his son William for life;

"and after the death of my said son William then I give and bequeath the same and every part thereof to his heirs at law forever" (Rec., p. 82).

On the 13th of January, 1863, Richard Reeder, guardian of Frances M. and Mary G. Dowling, leased this parcel to Castalio Hosmer for three years (Rec., p. 84).

On September 11, 1865, Frances M. Dowling and Mary G. Dowling conveyed as heirs of William Dowling, Sr., and of William Dowling, Jr., to John F. Ennis, trustee (Rec., p. 85).

On June 22, 1865, a bill in equity was filed in the Supreme Court of the District of Columbia by Frances M. Dowling against Mary G. Dowling, under which, on the 15th of July, 1865, John F. Ennis was appointed trustee to sell (Rec., pp. 93–95).

On the 11th of May, 1866, John F. Ennis, trustee, conveyed said parcel B to Benjamin F. Isherwood in fee (Rec., p. 86).

The plaintiffs aver that the said Howe was prior to the year 1830 assessed by the municipal authorities of the city of Washington as the owner of parcel B, and therefore liable for the taxes thereon, and the deed aforesaid from the corporation to the said Dowling purports to convey a fee simple title. This title said Dowling, by his said deed of May 30, 1831, conveyed to Howe, specially reserving the title which he, Dowling, had as tenant of the leasehold interest. By the said deed of July 18, 1835, from Howe's executors to William Dowling, he, Dowling, assumed to acquire the fee simple title to parcel B, and he disposed of the same by his last will, probated October 23, 1852, and hereinbefore referred to.

It will be observed that by the deed from the executors of Howe to Dowling of July 18, 1835, conveying parcel B, the lease upon that lot was merged.

Parcel C.

Fennell Lease.

It will be recollected that the lease to Fennell was not executed until years after the original bill in the Bickley judgment creditors' suit had been filed. By the supplemental bill filed in that cause (Rec., p. 179) the reversion was specifically mentioned. The decree upon said supplemental bill (Rec., p. 182) directed a sale of the same, but did not require Peter or Munroe to join in the deed.

A reference to the deed (Rec., p. 45) will show that they did not so join. Inasmuch, however, as the residuary interest was specifically directed to be sold no question can arise and none has arisen with respect to the title of the plaintiffs to parcel C. The averment in that respect in this paragraph of the bill is as follows:

> "And the complainants aver that under the said supplemental bill and decree, a fee simple title from said Glover to said parcel 'C' is vested by mesne conveyances in them."

If parcel C alone were concerned the only reason why the plaintiffs would have needed to resort to a court of equity would be on account of the outstanding legal title which might be improperly and oppressively acquired by the defendant Camp, and also by reason of vexatious litigation and cloud on title.

7. The averments of paragragh 7 (Rec., p. 10) are as follows:

> "That the said Benjamin F. Isherwood bought the respective parcels as follows:
>
> "Parcel 'A,' from William Redin and George Cover, trustees, by deed dated September 25th, 1852 (Rec., p. 60).
>
> "Parcel 'B,' from John F. Ennis, trustee, by deed dated May 11th, 1866 (Rec., p. 86).
>
> "Parcel 'C,' from the heirs of Abraham Bradley et al., by deed dated September 21st, 1852 (Rec., p. 88).

"That these purchases were made by the said Isherwood at public auction, at which a fee simple title was advertised and proclaimed to be sold; that he received fee simple deeds therefor; that he had the title to the same examined by competent lawyers who advised him that he had acquired a good fee simple title to the said parcels by his said deeds hereinbefore referred to. That from the dates of said purchases down to the date of his sales to the said Willard, as hereinbefore and hereafter set forth, he the said Isherwood, claimed as against the whole world to own the same in fee simple; that he collected for his own benefit rents during all that time from houses which were upon the said lot, made and paid for repairs upon the same, and paid all taxes and charges thereon; and, further, on the 16th day of August, 1873, he made and recorded with the surveyor of the District of Columbia, a subdivision of said lot twenty (20) into sublots twenty-eight (28) and twenty-nine (29)" (Rec., p. 110).

The averments of paragraph 8 are as follows (Rec., p. 11):

"8. That the said Willard bought all of the said parcels, being the whole of said original lot numbered twenty (20), then designated as sublots twenty-eight (28) and twenty-nine (29), as aforesaid, from the said Isherwood and received a fee simple deed for the same from him on the 4th day of May, 1882; that he had the title to the said lot examined by The Real Estate Title Insurance Company of the District of Columbia, which reported the same good in fee simple in the said Isherwood. That thereupon and in the year 1882 the said Willard entered upon the possession of the said lots claiming as against the whole world a fee simple title thereto under the said deed; that up to the time of his death he occupied the same and every part thereof under said claim of title, and collected for his own benefit rents from the houses which were and are thereon, and paid all

repairs upon the same, and also paid all taxes and charges thereon down to the time of his death. That since his said death the complainants have succeeded to his said possession and title, and have collected rents, paid repairs, and have acted generally as the owners in fee simple of said lots. Said deed to Willard, and each of the deeds mentioned in paragraphs six and seven of this bill, were duly recorded among the land records of the District of Columbia."

The averments of paragraph 9 are as follows (Rec., p. 11):

"9. That in the year 1896 the said Willard erected improvements upon the rear part of said lots of the following dimensions, to wit, a three story and attic building thirty-four and one-half (34½) feet long by thirty-three (33) feet wide, and at a large cost, which improvements remain up to this date, yielding rent to the complainants."

The averments of paragraph 10 are as follows (Rec., p. 11):

"10. That the said Willard had no notice or knowledge of any claim on the part of the defendant or of any other person or persons adverse to him prior to the institution of the said ejectment cases on the 8th day of October, 1903, as aforesaid."

The averments of paragraph 11 are as follows (Rec., p. 11):

"11. That what is known as the Blodget Claim has been notorious in this District for upwards of thirty years. That beginning in June, 1873, certain persons claiming to be the heirs at law of said Samuel Blodget, Jr., began filing in the office of the Recorder of Deeds for this District, agreements with so called agents relative to all the real estate which was of said Samuel Blodget in his lifetime, looking to the recovery of said real

estate, the same being the real estate sold in said Chancery Cause No. 8, following the same on said land records with various agreements, deeds, assignments, deeds in trust, etc., bringing ejectment suits and dismissing them before trial, thereby placing clouds of record on large quantities of real estate in this District in the possession of bona fide purchasers for value; the object of all which was to intimidate timid owners and extort money for quitclaim deeds.

"The title companies and examiners of title in reporting upon the title to any piece of real estate passing under said Chancery Cause No. 8 would state upon such report 'this lot is within the Blodget claim which is considered to be worthless' or words to the same effect.

"Finally one ejectment suit was brought to trial, resulting in a verdict for the defendant, and the judgment on verdict affirmed by the Court of Appeals, it being the case of Johnson *vs.* Van Wyck, 4 Apps. D. C., 294 to 328, in which the court held the deed to Johnson, the plaintiff in ejectment, void as against public policy and champertous. It was under an intimation in the opinion in that case that said Blodget claimants undertook to withdraw from that deed and to reconvey to said Johnson upon certain trusts freed from the taint of champerty, and it is under that deed that the defendant Camp claims title.

"A reference to the report of said case in the Court of Appeals, D. C., will show in a general way the kind and character of many of the agreements, deeds, etc., so put upon the land records."

The averments of paragraph 12 are as follows (Rec., p. 12):

"12. That the complainants, upon information and belief, aver that the said defendant Camp claims that he is the assignee of the heirs at law of the said Blodget; that after the execution of

the said leases there remained in said Blodget and his heirs a reversion in fee in and to the said lot numbered twenty; that only a rent charge passed under and by the said proceeding in said equity case of Bickley *vs.* Blodget; that as the said leases have expired without purchase by the lessees the reversion comes into possession, and that he, therefore, as plaintiff in ejectment, has the right to recover possession and title in fee simple of said lot numbered twenty."

The averments of paragraph 13 are as follows (Rec., p. 12):

"13. That on the other hand, the complainants contend:

"1. That the defendant can not recover in any event as to parcel 'C,' inasmuch as a fee simple title thereto indisputably passed under the aforesaid supplemental decree in the said case of Bickley *vs.* Blodget.

"2. That under the law a fee simple title passed in the original decree in said cause under the term 'ground rents.'

"3. That in any event by the sale of said 'ground rents' the right to receive the rents of the said lot numbered twenty passed absolutely to the purchaser and that there only remained in the said Blodget and his heirs a mere naked reversion without beneficial estate.

"4. That in any event the purchase by the lessees of the rent charge merged the whole beneficial and equitable estate in the grantors of the complainants, and that therefore the equitable title to the said premises is vested in the complainants.

"5. That the acts of the parties claiming title successively to the said lot show conclusively that it was the intention of said parties to deal with a fee simple title and that they supposed that they had done so.

The averments of paragraph 14 are as follows (Rec., p. 13):

"14. That while the complainants believe that they have a good defense at law against the said ejectment, nevertheless their legal remedy is not as full, adequate and complete as is their remedy in equity, for the following reasons:

"1. The plaintiff in ejectment can take a nonsuit and possibly acquire the naked legal title and harass the complainants with repeated actions of ejectment.

"2. It may be claimed, and, as complainants aver on information and belief, is in fact claimed by the defendant that the words 'ground rents' do not import in law a fee simple title. If this claim be well founded, then these complainants might be exposed to great delay and expense in resisting said ejectment or ejectments and yet in the end be compelled to resort to this court to protect their equitable title.

"3. These complainants are advised by counsel that the lessees under said leases had the right at any time during the pendency of the said leases to acquire the reversion in fee by the following money payments to the holders of the reversion, to wit:

"Parcel 'A'	$500.00
"Parcel 'B'	500.00
"Parcel 'C'	500.00

"Inasmuch as the right to receive rents in perpetuity was sold under said bills and decrees in equity, there remained nothing in the lessor or his heirs save the mere possibility of naked reversion upon the termination of said leases without the exercise of the rights of purchase. If the said right had been exercised, the reversion would have remained naked, and the renewal would have been of no pecuniary benefit to the defendant, nor would he have been entitled to the said sums of money for said renewals, for the reason that the rents reserved were the consideration moving for said renewals and they belonged

to the gantors of the complainants and not to the defendant or to his grantors, and moreover the said leases as to parcels 'A' and 'B' were merged when as hereinbefore stated they were bought by the grantee's purchasers under said decree in equity.

"And the complainants aver in this connection that they have been guilty of no laches in the premises. When their grantor, the said testator Caleb C. Willard first learned of the claim of the said defendant, he was in a bad state of health, suffering from a chronic disease which caused his death. He had never had any notice or even suspicion that there was any defect in his title. It was difficult for him to find his papers including the abstracts of title on the faith of which he had bought the lot in question. It was not until the summer of the year 1905 that he was able to learn the residence of the said Benjamin F. Isherwood from whom he bought and whose deposition in the said ejectment cause he took in June, 1905. That it was not until November, 1905, that the complainants were enabled to get from the city of Baltimore in which the system of 'ground rents' has for a long time obtained, information as to the customs there in existence for more than a century as to the legal status of said ground rents, and the interpretation of said phrase among persons therewith conversant. After the said Willard's death his devisees, the complainants, have been diligent in following up the sources of information which had come to his knowledge. Wherefore the complainants aver, upon the advice of counsel, that they have the right to a renewal of the said leases (in case the court should be of the opinion that a fee simple title did not pass under a sale of the 'ground rents,' or that the said leases have not merged as hereinbefore set forth), upon the payment of such nominal sum as the court shall find the original lessor or his heirs entitled to for a renewal of said leases in the existing situation, in which they have no beneficial interest in said lots."

The prayers of the said bill are as follows (Rec., p. 14):

"1. That your honors will grant unto them the United States writ of subpœna to be directed to the said defendant, commanding him to appear herein and answer the exigencies of this bill of complaint, and will also enjoin the defendant, his agents and attorneys, pendente lite from proceeding with the aforesaid ejectment suit now pending in this court.

"2. That if your honors shall be of the opinion that under the mesne conveyances and proceedings hereinbefore set forth, the complainants have derived and are now vested with all the right, title, and interest which the said Samuel Blodget had to the lot in question, then that your honors will grant unto the complainants the United States Writ of Injunction, enjoining the said defendant, his attorneys and agents, from further prosecuting the said ejectment cause now pending in the Supreme Court of the District of Columbia and hereinbefore specifically referred to; and will further enjoin the said defendant, his attorneys and agents, from instituting in the Supreme Court of the District of Columbia or elsewhere, any further or other actions of ejectment or other proceedings tending to harass and disturb the complainants in the possession of the said premises and tending further to cast a cloud upon their title to the same.

"3. If, however, your honors should be of the opinion that the complainants did not derive through said mesne conveyances and proceedings hereinbefore set forth and are not now possessed through the same with all the right, title, and interest to the estate which the said Blodget owned in the said lot, and should further be of the opinion that the defendant is vested with the reversion in fee as assignee of the heirs of the said Blodget, then that your honors will decree that the said defendant renew the said leases to the complainants for a period of ninety-nine years, renewable

forever, and that the court will further determine what, if any, sums should be paid to the said defendant as a condition to the conveyance by him to the complainants of the naked reversion, which he, the said defendant, would upon that supposition hold in the premises in question. And that your honors will, upon the payment to him by the complainants of such sums, decree that he forthwith convey to the complainants such interest in reversion.

"4. That your honors will grant unto the complainants such other and further relief as the nature of their case may require and as unto the court may seem meet."

II.

ARGUMENT.

Proposition First.

Robert S. Bickley Intended by the Judgment Creditor's Bill Which He Filed Against Samuel Blodgett et al., on October 9, 1802 (Rec., p. 110), to Subject all Assets of His Judgment Debtor, Samuel Blodgett, to the Lien of His Judgment.

Among the properties so to be subjected was Blodgett's title to lot 20 in square 254 (Rec., p. 117). He specifically prays that all of the property mentioned in his bill, which includes said lot 20, be subjected to his claim, and be sold to raise the money due to him (Rec., pp. 117–118). He further prays (Rec., p. 118), that all of the interest of Thomas Peter, surviving trustee under the deed of trust from Samuel Blodgett to Thomas Johnson, Jr., and Thomas Peter (Rec., p. 25), and also all of the interest of Thomas Munroe, Commissioner, supposed to be the interest of the United States in said lot 20, be also sold, and that the said Peter and the said Munroe unite in a conveyance to the purchasers of the

property sold under the decree of the court in said cause (Rec., p. 118).

As has been seen the decree of the court (Rec., pp. 163–165) directs that the trustee Robert Brent shall convey all of the title of the said Samuel Blodgett, and also all of the title of the said Thomas Peter, and also all of the title of the said Thomas Munroe to the purchasers at said sale. It further directs (Rec., p. 164) that the said Peter and the said Munroe shall by joining in the said conveyance of the said trustee Brent convey all of the interest in the property sold which they derived from the said Blodgett, or from the United States.

There can, therefore, be no question that the purpose of the said judgment creditor's bill and of the court in passing the said decree was to vest in the purchaser of the trustee, Brent, not only all of the interest which Blodgett had in the said lot, but also all of the interest which Peter and Munroe had in the same, derived in any way from the said Blodgett, or from the United States. This fact was specifically found by Mr. Justice Barnard in his final decree in this cause (Rec., p. 212), and upon appeal by Mr. Justice Robb delivering the opinion of the Court of Appeals of the District of Columbia (Rec., p. 232), 35 App. D. C., 169, where he says:

> "We therefore agree with the learned trial justice that the extinguishment of the ground rents exhausted the rights of the reversioner, and that when the ground rents and the leasehold interests became merged, the merger carried with it the fee. We more readily adopt the reasoning and conclusion of the Maryland authorities on this question, because of the extreme technicality of appellant's contention. *When these rents were sold and conveyed, it was undoubtedly intended to lay hold of and extinguish all of Blodget's interest in the property mentioned. Appellant's claim is, therefore, based upon an alleged omission, rather than upon any just or equitable foundation.*"

It is of no consequence in a court of equity whether Peter and Munroe obeyed literally the decree of the court or not. A court of equity will hold that to have been, which was by solemn decree ordered to be, done. These proceedings in equity were of record as the decree of a court of competent jurisdiction, and were notice to all the world. Whoever dealt with the property from the date of the decree was bound to know that the purchasers from Brent, the trustee of the court, held all of Daugherty's title to lot 20, which was vested either in him or in Peter or in Munroe.

Proposition Second.

The Sale of the Ground Rents of Parcels A and B Was the Sale of Blodgett's Reversion.

It would be a matter of interest to consider generally the origin and nature of ground rents, and the history of their development in various jurisdictions. They have had one development in England, another in Ireland, another in Pennsylvania, and another in Maryland.

We are particularly concerned with their development in Maryland, because for many years preceding the cession to the United States of that part of the territory of Maryland which is now contained in the District of Columbia, they had played an important part in the land title history of that State, more especially in the city of Baltimore, where, today, a large part of the territory of that city is held upon ground rents.

In the appendix to this brief there is the opinion of the chief title examiner, Edgar S. Bevans, of the Title Guarantee and Trust Company of Maryland, which opinion contains, among other things, a condensation of said history (Rec., pp. 65–86).

In the case of *Banks* vs. *Haskie*, 45 Maryland, 207, Mr. Justice Miller, in delivering the opinion of the Court

of Appeals of Maryland, reviews the origin of this system of leases. At page 218 he says:

> "This character of tenure is, so far as we know, among the States peculiar to Maryland. It has not been generally adopted so far as we are informed in any other State. It was introduced here in colonial times, and has been a favorite system of tenure from a very early period. A large city has been built and improved, and a vast majority of the real estate in Baltimore is now held under it. It is not open to any of the objections against perpetuities. Property is not thereby placed *extra commercium*. On the contrary, these leasehold interests devolve upon the personal representatives of the owner, are in terms made assignable, and they, as well as the ownerships in fee under the denomination of 'ground rents,' are subjects of daily transfer, and are constantly sought for as safe investments of capital. It is a peculiar description of tenure which has been sustained by our courts, and approved and fostered by our people."

In *Myers* vs. *Silljacks*, 58 Md., 319, Chief Justice Alvey, in delivering the opinion of the court, says:

> "We all know that estates dependent upon leases, like the one before us, are extremely common in this State, and particularly so in the city of Baltimore. Both the reversionary freehold and the leasehold estate are the subjects of daily transfers and assignments, and they constitute a considerable portion of the substantial wealth of the people. While the one estate is subject exclusively to the law that governs real property, the other is mainly controlled by the law that governs personalty—the one estate passing by descent and being subject to the law of partition among heirs, while the other is the subject of administration, and is governed by the law that directs distribution of the personal estate. Both estates alike are

> the subject of mortgage and judgment lien, and are constantly being sold and transferred in the enforcement of such charges. It is of the utmost importance, therefore, that the tenure be maintained with entire certainty; that the true relation of the parties to the property be at all times fully recognized, so that their exact rights may be known and enforced, and that third parties may know how to deal with respect to those rights."

In the case of Ogle *vs.* Reynolds, 75 Md., 145, the court say on page 150:

> "Primarily, 'ground rents' mean, it is true, the rent payable to the lessor, *but at the same time it must be conceded that the reversionary interest in the lots thus leased is generally designated and known as 'ground rents.'*"

The very fact that it is necessary to coin a term, "ground rents," to show what is left in a grantor after the creation of a lease of this kind is in favor of the contention which the courts have sustained as to ground rents. If there was a reversion left, why did they not say "reversion?" If it was simply a right to receive rents, why did they not say "rents?" But they speak of what? They speak of Blodgett's *ground rent*, and they speak of it as though it were a thing thoroughly understood by everybody.

If the right to take these rents had simply been a sequestration of rents in perpetuity, it could not have been treated as real estate; it would have been simply the right to receive personal property. So, whatever view you take of it, you are driven to the conviction that the term "ground rent" can not possibly be a mere right to receive rent reserved on lease. It means that the owner of the fee simple had carved out of the land a leasehold and left in himself a ground rent—i. e., a rent which is to be received out of the ground itself.

These ninety-nine-year leases, or "ground rents," being renewable forever, were practically in perpetuity. The owner of the land intended to lend out the land perpetually, at interest, paying no taxes and receiving a fixed income, which could be granted in fee or would descend to his heirs. As has been seen, this method of conveyance became a favorite form of investment in the early history of Maryland and afterward prevailed, to an almost universal extent, in the city of Baltimore.

The essence of the renewable lease, from the standpoint of the lessor, is the rent; certainly the original purpose of the lease is the reservation of the rent as a permanent investment, the naked reversion, for all practical purposes, being a negligible quantity so long as the lessee observed the covenants and conditions of the lease. And even where these have been broken, courts of equity have always been ready to relieve against forfeiture and to allow compensation for the breach.

In the case at bar, the ground rents had been conveyed to the leaseholders, i. e., redeemed or bought out with a view to extinguishment, and the grantors and their assigns, for about three-quarters of a century, have asserted a fee simple title to the ground.

Everybody who has dealt with this property, whether professional or layman, has assumed that the fee simple passed and must have passed, again and again; that it passed when Mr. Willard bought, and when Mr. Isherwood, his grantor, bought, and so on.

In the case of *Jones* vs. *Rose*, 96 Md., 483, the Court of Appeals of Maryland established the doctrine that where the rent on a perpetual lease is extinguished, the reversion is destroyed also; or, to state the proposition in another form, the leaseholder may become vested with a fee by the grant of the rent, or an extinguishment thereof, without the express grant of the reversion.

In *Ogle et al.* vs. *Reynolds*, 75 Md., 145, the facts

were substantially as follows: A certain Harriet A. Hayden, by her will, devised several ground rents arising and payable out of certain lots in Baltimore City, in the following manner, namely:

> "First. The one at the corner of Eutaw and Biddle streets to pay my funeral expenses.
>
> "Second. The next, or second, ground rent to be used to buy and put up a tomb, etc.
>
> "Third. The next or third ground rent, to be used for the same purposes as that mentioned in the second clause, if the other two rents should be insufficient for that purpose."

The executors of the will, under the implied power of sale, which the court subsequently held to be vested in them, sold the reversionary interest of the testatrix in the three lots of ground out of which the rents issued. The sales were reported to the Orphans' Court under a statutory requirement. The purchasers excepted to the ratification of the sales, assigning as one of the reasons for the exception that the testatrix did not mean that the reversionary interest in the lots should be sold, but that the accrued rents only were to be applied to the purposes mentioned in the will.

The court overruled the exception and sustained the sales, stating in the course of the opinion that if the contention of the purchasers to the effect that the testatrix meant that the annual rents issuing out of these lots should be applied to the purposes specified in the will be sound, there would have been an intestacy as to the residuary interest in the lots, and this the court could not for a moment suppose she intended.

The court further said:

> "Primarily 'ground rents' mean, it is true, the rent payable to the lessor, but *at the same time, it must be conceded that the reversionary interest in the lots thus leased, is generally designated and known as 'ground rents.'* And, as used in the

> will before us, it is clear that the testatrix meant that the reversionary interest which belonged to her should be sold and the proceeds applied to the purposes mentioned in the will, and did not and could not have meant the rents issuing out of the lots."

In the case at bar, the defendant necessarily claims that, under the original decree in the Bickley case, what the court sold was the right to collect the rent under the Dougherty and Frethey leases, for the period of the lease, ninety-nine years; that it left outstanding in Blodgett the absolute title to the ground—something more than the ordinary reversion, the absolute title—with the right to collect the rents in the purchasers under the decree during the term of these leases. If the court intended simply to sell the right to collect the rent under these leases, it would have said so. It might have compelled an assignment of the lease by Blodgett to the purchasers, if it had intended to do that; but it decreed not an assignment of the lease or a sale of the right to collect the rent, but a very significant term was used, namely, the "ground rents" were to be sold. So that the court must have apprehended, in making that decree, that they were selling something more than merely the right to collect the rents—that they were selling the ground rents. The purchasers under that decree assumed that they were getting something more than the mere right to receive the rents; that they were getting the ground rents, that they were getting the reversion.

Under the claim made by the defendant, the title to the property remained outstanding in Blodgett; if the tenant under the lease should fail to pay the rent, Blodgett was the one to enforce it—to enforce the forfeiture. The purchaser, according to the claim, would have no such right. He could use the name of Blodgett, possibly,

in a suit against the tenant to collect the rents, but that is the utmost he could do. He could not enforce the forfeiture provided for in the lease, because it would absolutely determine his rights in the premises, namely, the collection of the rent—the receipt of the rent.

And so we have this queer condition of things: That if the tenant under this lease desired to avail himself of the privilege of purchasing the lease, he would pay the money to whom? Pay to Blodgett; what would become of the right of the man who had purchased the ground rents, who thought he had purchased the reversion? The thing leads to an actual legal absurdity; showing that the court understood, the trustees who sold the property understood, and the purchasers understood, that they were purchasing the reversion in the property; in other words, they were purchasing the property subject to the lease. Otherwise, the court decreed the sale of absolutely nothing, and the purchaser bought nothing.

Proposition Third.

The Conveyance of the Usufruct of a Property Imports the Conveyance of the Ownership Thereof.

Since text-writers have first written on the law, they have said that there are many ways in which a man might grant to another all or a certain interest in a parcel of land. This is generally done in a technical way and by the use of technical words. But a man can do it just as effectually without the use of technical words. In order to give a man ground, you generally give him the ground, describing it; but, if you choose to give him not the ground but the profits of the ground, you need not say a word about the fee. If you give him the profits of the ground forever, you give him the ground, because the profits are all that make the land valuable.

In the case of *DePeyster* vs. *Michael* (2 Selden, 6 N. Y., 467), it is said in the argument of counsel, as follows (p. 479):

> "Rent must issue out of the profits of the land. 3 Kent's Com., 460; Gilbert on Rents, 9; Co. Litt., 142a; 8 Barn. & Cress., 141; 2 Black. Com., 41. If a man seized in fee, by his deed granteth to another the profits of those lands, to have and to hold to him, and maketh livery, according to the form of the deed, the whole land doth pass, for what is the land but the profits thereof." Co. Litt., 4b.
>
> "In *Parker* vs. *Plummer* (Cro. Eliz., 190), it was adjudged that a devise of issues and profits carried the land; and it was said that 'to have the land and to have the issues and profits of the land' is all one. In a devise the word 'rents' carries the lands."
>
> *Kerry* vs. *Derrick*, Cro. Jac., 104.

It is elementary law that when you grant a man the whole of the beneficial interest in land, you grant him the absolute title to it. The mere legal interest is but a shell; it is the estate, the profits, the rents of lands that are the kernel and the substance.

Proposition Fourth.

The Appellees and Those Under Whom They Claim Have Had Adverse Possession of Lot 20, Claiming Title Thereto as Against All the World, from the Time of the Sales and Conveyances Under the Bickley Chancery Suit.

Every conveyance from that time on has assumed to convey all of the title of Blodgett.

It is hardly necessary to go into detail with respect to this, for a reference to the chains of title in the cases of parcels A and B as well as of parcel C will show that

with each transfer of title there has been an attempted transfer of all of ~~Daugherty's~~ Blodgett's title as well as of the title of those claiming as purchasers under the decree in the Bickley suit, and of their grantees.

In the case of *Willison* vs. *Watkins*, 3 Peters, 43, the Supreme Court of the United States recognizing the principles of law applicable to the relation of landlord and tenant—that a tenant is estopped from disputing his landlord's title, can not pass any greater title than he has, and all that—lays down some rules of law applicable to the right of adverse possession on the part of the tenant.

This was a suit brought by a party who claimed that the defendant was in possession under a tenant and the only notice to the landlord of the claim was that Bordeaux, the tenant, notified Willison, when they were negotiating as to a purchase by Bordeaux, that he only claimed the land by adverse possession—simply a talk between the parties. The case is quite long. The court says in its opinion (page 47):

> "It is an undoubted principle of law, fully recognized by this court, that a tenant can not dispute the title of his landlord, either by setting up a title in himself or a third person, during the existence of the lease or tenancy. The principle of estoppel applies to the relation between them, and operates in its full force to prevent the tenant from violating that contract by which he obtained and holds possession. He can not change the character of the tenure by his own act merely, so as to enable himself to hold against his landlord, who reposes under the security of the tenancy (believing the possession of the tenant to be his own), held under his title, and ready to be surrendered by its termination, by the lapse of time or demand of possession.
>
> "The same principle applies to mortgagor and mortgagee, trustee and cestui que trust, and generally to all classes where one man obtains pos-

session of real estate belonging to another by a recognition of his title. On all these subjects the law is too well settled to require illustration or reasoning, or to admit of a doubt. But we do not think that in any of these relations it has been adopted to the extent contended for in this case, which presents a disclaimer by a tenant with the knowledge of his landlord, and an unbroken possession afterwards for such a length of time that the act of limitations has run out four times before he has done any act to assert his right to the land. Few stronger cases than this can occur, and if the plaintiff can recover without any other evidence of title than a tenancy existing thirty years before suit brought, it must be conceded that no length of time, no disclaimer of tenancy by the tenant, and no implied acquiescence of the landlord can protect a possession originally acquired under such a tenure.

"If there is any case which could clearly illustrate the sound policy of acts of repose and quieting titles and possessions by the limitation of actions, it is in this. Here was no secret disclaimer, no undiscovered fraud, it was known to Bordeaux and was notice to him that Willison meant to hold from that time, by his own title and on adverse possession. This terminated the tenancy as to him, and from that time Bordeaux had a right to eject him as a trespasser.

"Had there been a formal lease for a term not then expired, the lessee forfeited it by this act of hostility; had it been a lease at will, from year to year, he was entitled to no notice to quit before an ejectment. The landlord's action would be as against a trespasser, as much so as if no relation had ever existed between them.

"Having thus a right to consider the lessee as a wrongdoer, holding adversely, we think that under the circumstances of this case the lessor was bound so to do. It would be an anomalous possession, which as to the right of one party was adverse and as to the other fiduciary, if after a disclaimer

with the knowledge of the landlord, and attornment to a third person, or setting up a title in himself, the tenant forfeits his possession and all the benefits of the lease he ought to be entitled to, such as result from his known adverse possession. No injury can be done the landlord unless by his own laches. If he sues within the period of the act of limitations, he must recover; if he suffers the time to pass without suit, it is but the common case of any other party who loses his right by negligence and loss of time. As to the assertion of his claim, the possession is as adverse and as open to his action as one acquired originally by wrong; and we can not assent to the proposition that the possession shall assume such character as one party alone may choose to give it. The act is conclusive on the tenant. He can not make his disclaimer and adverse claim so as to protect himself during the unexpired term of the lease; he is a trespasser on him who has the legal title. The relation of landlord and tenant is dissolved, and each party is to stand upon his right.

"It is on this principle alone that the plaintiff could claim to recover in this action. If there was between him and the defendant an existing tenancy at the time it was brought, he had no right of entry. The lessee can not be a trespasser during the existence of the lease, and can not be turned out until its termination. At the end of a definite term the lessor has his election to consider the lessee a trespasser and to enter on him by ejectment; but, if he suffers him to remain in possession, he becomes a tenant at will, or from year to year, and in either case is entitled to a notice to quit before the lessor can eject him. The notice terminates the term, and thenceforth the lessee is a wrongdoer and holds at his peril.

"If the tenant disclaims the tenure, claims the fee adversely in right of a third person or his own, or attorns to another, his possession then becomes a tortious one by the forfeiture of his right. The landlord's right of entry is complete, and he may sue at any time within the period of

limitation; but he must lay his demise of a day subsequent to the termination of the tenancy, for before that he had no right of entry. By bringing his ejectment he also affirms the tenancy and goes for the forfeiture. It shall not be permitted to the landlord to thus admit that there is no tenure subsisting between him and the defendant which can protect his possession from his adversary's suit, and at the same time recover on the ground of there being a tenure so strong that he can not set up his own adversary possession."

Then the court refers to other cases in the same court, and continues (p. 50):

"We are not aware that in applying this doctrine to the case now before the court, we shall violate any settled principle of the common law.

"If a different rule was established, the consequences would be serious. A mortgagee, a direct purchaser from a tenant, or one who buys his right at a sheriff's sale, assumes his relations to the landlord with all their legal consequences, and they are as much estopped from denying the tenancy. If no length of time would protect a possession originally acquired under a lease, it would be productive of evils truly alarming, and we must be convinced beyond a doubt that the law is so settled before we could give our sanction to such a doctrine.

"An examination of the authorities on this point relieves our mind from all such apprehension by finding our opinion supported to its full extent by judicial decisions entitled to the highest respect, and which we may safely adopt as evidence of the common law."

The court then referred to a leading English case and says (p. 51):

"The relation between tenants in common is, in principle, very similar to that between lessor and lessee; the possession of one is the possession of the other, while ever the tenure is acknowledged.

> But, if one ousts the other, or denies the tenure and receives the rents and profits to his exclusive use, his possession becomes adverse, and the act of limitations begins to run. The possession of a trustee is the possession of his cestui que trust, so long as the trust is acknowledged; but from the time of known disavowal, it becomes adverse. So of a mortgagee, while he admits himself to be in as mortgagee, and therefore liable to redemption. But if the right of redemption is not foreclosed within twenty years, the statute may be pleaded; and so in every case of an equitable title, that being the case of a trustee whose possession is consistent with the title of the claimant.
>
> . . . . . .
>
> (p. 53) "All these principles bear directly on the case now before us; they are well settled and unquestioned rules in all courts of law and equity, and necessarily lead to the same conclusion to which this court has arrived. The relations created by a lease are not more sacred than those of a trust or a mortgage. By setting up or attorning to a title adverse to his landlord, the tenant commits a fraud as much as by the breach of any other trust. Why, then, should not the statute protect him as well as any other fraudulent trustee, from the time the fraud is discovered or known to the landlord? If he suffers the tenant to retain possession twenty years after a tenancy is disavowed and can not account for his delay in bringing his suit, why should he be exempted from the operation of the statute more than the mortgagor or the mortgagee? We can perceive no good reason for allowing this peculiar and exclusive privilege to a lessor; we can find no rule of law or equity which makes it a matter of duty to do it, and have no hesitation in deciding that in this case the statute of limitations is a bar to the plaintiff's action."

In the case at bar, under the averments of the bill and under the copies of deeds set out and made exhibits with the bill, it is shown that after the trustees conveyed

to Bickley (the assignee of the purchaser at the auction sale) the ground rent, Bickley conveyed the property—one parcel to Dougherty, the lessee (not to him, his executors and administrators, thus merely passing the right to the rents)—absolutely in fee, reciting his purchase from Johnson and Peter, trustees. So when he conveyed to Howe, the other lot, he conveyed the fee and when Howe conveys, he conveys the fee; and every party from that time down, from the original conveyance by the purchaser—every conveyance of this property is absolutely in fee.

In *Trustees of the Poor* vs. *Jennings*, 42 Am. State Reports, 854, a very interesting case, decided by the Supreme Court of South Carolina, the court considers what would enable a tenant to acquire title by adverse possession.

In this case a large tract of land had been given for some eleemosynary purpose, and the trustees of the Wadsworth Poor School had become incorporated for the purpose of holding this land. This corporation, thus created, on the 15th day of April, 1813, leased 330 acres of land devised under will of Thomas Wadsworth, unto one Thomas G. Walker, for the term of seventy-five years, the same beginning on the 12th day of December, 1815, and ending on the 12th day of December, 1890. This lease was for valuable consideration, and by a deed of transfer therefor, which deed of lease was duly recorded in the office of the register of mesne conveyances for Greenville District, where the said leased land was situated. This lease was, by Thomas G. Walker, assigned to one David McNeeley, on the 19th day of October, 1821, and David McNeeley assigned the same to one John P. Pool, on the 15th day of February, 1847.

Afterwards John P. Pool, by his deed therefor, conveyed 100 acres in fee simple (as it is agreed by the parties to the appeal) to Fagin E. Martin, and in the

deed itself recited all the foregoing facts, and this deed was duly recorded in the office of the register of mesne conveyances on the 30th of January, 1850.

Here is where the assignee of a lease, reciting the source of his title under the lease, conveys 100 acres of this 300 and odd acre tract to a purchaser in fee simple, making these recitals right on the face of the deed, and that deed is recorded.

Under a judgment against Fagin E. Martin this land was sold as Martin's property on the 6th of January, 1857, by the sheriff of Greenville District, to Charles J. Elford. After Mr. Elford's death, and in the settlement of his estate, this land was sold and conveyed by the commissioner in equity to Becco on the 7th of October, 1867. Becco sold and conveyed to David, January 21, 1872. David sold and conveyed to Kennemore and Tate, December 4, 1879. Kennemore purchased, by deed therefor, Tate's interest. Kennemore sold and conveyed a part of the land to McGee, January 1, 1891. McGee sold his part, by deed therefor to L. I. Jennings, on the 23d day of February, 1891. Kennemore sold his part by deed to L. I. Jennings on the 23d of February, 1891. All these several deeds were duly recorded in the office of the register of mesne conveyances for Greenville County.

On the 25th day of April, 1892, in the Court of Common Pleas for Greenville County, the plaintiff (the trustees of the Wadsworth Poor School) brought an action against the defendant, L. I. Jennings, to recover sixty-two and one-fourth acres of the land, and in the complaint disclosed plaintiff's title, the lease and its termination, demanding the recovery of the land and $200 as rent and profits. The defendant in his answer admitted the possession of the land in controversy, but denied plaintiff's title and right to receive the land, or rents and profits; further, that beginning on the 4th of December, 1879, he had been in the exclusive and con-

tinuous possession of the land sued for, claiming the same as his own, adversely to the plaintiff and all the world; that he and those under whom he claimed had been in the continuous, adverse possession of the premises for forty years, claiming the same as their own, and holding adversely to the whole world; further, purchase for valuable consideration without notice and adverse possession thereunder for more than ten years; that Kennemore, through whom he claimed, had made valuable improvements (in value $1,000), and that he believed he had a good title in fee in said premises, which sum he claims of the plaintiff; and, lastly, that the defendant and those under whom he claims have had exclusive, adverse and continuous possession of the premises in dispute, claiming a fee simple title against all the world for over twenty years.

Then follows an account of the trial below and the request for prayers and the assignments of error. In the court below the case was decided in favor of the defendant. Then, after discussing these well-known principles of the relation of landlord and tenant, the court says:

> "Under the view we take of the law of this State, governing cases of the character of that at bar, we are not left to deal with all these refinements of the law, for we take it that it is now fully established that wherever the relation of landlord and tenant is terminated by any hostile act, such as the conveyance of the land demised to a tenant for years, during such term, to another in fee simple, it becomes the bounden duty of the landlord to protect his title by regaining possession; that the Statute of Limitations cuts no figure as affording a protection against the rights of the landlord, for the simple reason that Statutes of Limitations only apply to those instances where the possession is tortious *ab initio;* whereas, in the other instance we shall hereafter unfold, the possession *ab initio* is not tortious.

"It need not be that the first possession shall be under deed, though in the case at bar it was so. The theory of the law in such cases is that the possession of the land is such as includes the seisin of the premises and such seisin in the person in possession of the land is incompatible with possession as a tenant; and after the lapse of twenty years such possession, under a claim of title, will draw to it the presumption of a grant from the true owner in fee. Of course, this possession must be open, adverse and continuous."

The opinion refers to a number of authorities, and continues:

"We have endeavored to make our meaning plain in regard to the effect of these deeds of conveyance in fee simple. We regard the first of such conveyances as a fraud upon the rights of the landlord, and as giving him a right of action to recover possession of such leased premises immediately after the execution of such deed, and that such right of action, if brought at any time within twenty years immediately following the execution of such deed, would have restored the land demised to the plaintiff corporation. This brings us squarely to the question: When was he bound to take notice of such deed? Unquestionably, if the fact of the execution of the deed had been brought to the actual attention of the plaintiff corporation at its date he would have been so bound. But will not the possession, being under the deed and it being recorded in the office of the register of mesne conveyances for Greenville County, have a similar effect? We think so.

"It was unfortunate for the plaintiff corporation that the rent for the term was a sum in gross paid by the tenant at the beginning of the lease, for the reservation of a yearly rent of 'one barley corn' was purely nominal. If the rent had been reserved to be paid annually, the landlord would have looked more closely after his rights in the premises. But the landlord and his tenant had

> the right to contract as they did, and if these misfortunes had not occurred, the landlord's right to have recovered the demised premises at the expiration of the lease would have been unquestioned. The grand object of the creation of the trustees into a body corporate was to enable them all the more readily to discharge the trust created by the will of Thomas Wadsworth, deceased. The corporation under the law is liable to sue and be sued. They can recover their rights under the law as well as can private individuals, and they are as liable to lose those rights by a failure to use them as are private individuals, except as affected by statutes of limitation. This presumption would have matured against a private individual. So it will against the corporation."

And here they held that the conveyance in fee and possession under it were evidence of notice.

In the case at bar, the claim on the other side practically amounts to this: That where the owner of ground executes a lease for ninety-nine years, and afterwards he gives an order to somebody, his executors, administrators and assigns, to collect those rents during the period of the lease, the lease requiring all taxes to be paid by the lessee, he, the lessor, can calmly sit down and say to himself,—

> "Well, here is a piece of property which, in the course of a century, will become very valuable, and I have provided for my heirs (whoever they may be), at that time; because, no matter what happens in respect of this property, no matter whether the tenant thinks he has a fee, or not, no matter whether the rent ceases or not, no matter whether it is conveyed in fee over and over again, or not, it does not affect me; at the end of the term of the lease my heirs can enter and obtain possession."

Now, the Supreme Court, in this Peters case, says that is an anomaly which the law will not permit.

Proposition Fifth.

The Opinions of Title Examiners Sustain the Claim of the Appellees.

It must be assumed that those persons who bought from Brent, trustee in the Bickley case, over a century ago, did not buy without getting the opinion of title examiners as to what they were purchasing. It can not be expected that after one hundred years counsel should be able to produce their abstracts of title and opinions thereon. Fortunately, however, counsel are able to produce the abstract and opinion of the late William Redin who, apparently, examined the title for Isherwood when he bought in 1852, and of the late Mahlon Ashford, who examined the title for Willard when he bought in 1882.

In the case of *Doe, lessee of Poor*, vs. *Considine*, 6 Wallace, 458, counsel submitted (p. 459) in support of their views the opinion of eminent lawyers of Ohio, given many years before the hearing of that cause, on the same titles as were there in question, to persons about to purchase and in accordance with the views assumed by the court below. The court apparently examined those opinions and said (p. 480):

> "We concur entirely in the views of eminent counsel whose professional opinions, long since written, have been submitted to us."

It would seem, therefore, that this honorable court attaches some weight to opinions of eminent counsel which have entered into and to a certain extent framed local law, and upon which the stability of titles to real estate in a measure depends.

The opinion of Mr. Redin will be found in the record, pages 221–225. In the said opinion (Rec., p. 222) Mr. Redin says:

> "A chancery suit was instituted by Rob't Bickley against said Blodgett, Peter, Frethey and others, to obtain the hotel which had been drawn

by Bickley, and also the payment of $26,634 for other prizes found due to Bickley by Blodgett, and to have sold Blodgett's ground rents secured on city lots, and divers other city lots, for payment thereof; and Rob't Brent was appointed by the court trustee. Johnson had died; and Thos. Peter was directed to join in the deeds with Brent to the purchasers. The decree is dated the 4th Oct. 1805.

"On the 15th Jan., 1807, said Brent, as trustee, sold and conveyed to Rob. F. Howe 'all the right to the ground rent reserved by Blodgett by said lease, dated in 1801, which was in Blodgett previous to and at the time of making said decree; and all the right, title, and interest therein which said Peter derived in and thereto by virtue of said deed of 1794 referred to in said decree, or since that time through said Blodgett.' And said Peter conveyed 'all the interest in said ground rent so reserved by said Blodgett which said Peter derived by virtue of said deed to him and Johnson, or which he had since acquired through said Blodgett.'"

In his remarks (Rec., p. 224), in resuming the chain of title, Mr. Redin says:

> "It was under this decree that Mr. Isherwood purchased the lot."

He then proceeds to point out the possibility of Mr. Isherwood having to recognize the leasehold interest of the original lessee or his assigns. He treats this, however, as a mere possibility, and upon this point he says as follows (Rec., p. 224):

> "The proper evidence of his holding under the lease would be an assignment thereof to him from Thorp; and, although I can find no assignment of the lease to Dowling, I can not but think there must have been one, and that he had become the owner of the leasehold interest at the time Howe's executors made the deed to him."

When Mr. Willard bought he had the title examined by the late Mahlon Ashford, whose abstract of title will be found at pages 200 and 209 of the record. At page 209 Mr. Ashford says:

> "The only imperfections I find in the record of this title are——"
>
> (Mr. Ashford then proceeds to note certain technical defects with which we are not concerned here. He then resumes as follows:)
>
> "With these exceptions the title according to the record is good in Benjamin F. Isherwood and free of all lien or incumbrance except taxes as certified by the collector.
>
> "May 2d, 1882. M. ASHFORD."

See, also, the opinion of Mr. Bevans contained in the appendix to this brief (pp. 65–86).

Proposition Sixth.

The Long Continued Possession of the Appellees and of Their Grantors Warrants Presumptions of Grants and Conveyances From Original Lessees.

When possession of real estate has existed uninterruptedly for a long period of years the courts have uniformly regarded the presumption of ownership as greatly strengthened. So strongly have the courts favored titles fortified by long possession that it has been said:

> "An act of Parliament, a grant from the crown, a deed, and in fact anything which will quiet a possession may be presumed from length of time where such act, grant, or deed would have been lawfully passed, made, or given."
>
> Jones on Evidence, 1st Ed., secs. 72–73.
>
> *Ricard* vs. *Williams and others*, 7 Wheat., 59.
>
> *McClanahan* vs. *Davis*, 8 Howard, 170.

It is not necessary to multiply authority on this point.

Proposition Seventh.

Should this Honorable Court Determine that the Reversions in Fee Did Not Pass to the Purchasers Under the Decree of the Court in Bickley's Judgment Creditor's Bill, then the Plaintiffs Are Entitled to the Aid of a Court of Equiy to Enforce a Renewal of the Original Ninety-nine Year Leases, and Also to Exercise the Rights of Purchase Therein Given.

Upon the supposition that the purchasers of parcels A and B from Brent, trustee, did not acquire a fee simple title, then they had a clear equity to enforce a renewal of their leases, and to the rights of purchase in said leases contained. This was explicitly decided by the Court of Appeals of Maryland in the case of *Banks* vs. *Haskie*, 45 Md., 207. In a very learned opinion reviewing the authorities Mr. Justice Miller, speaking for the whole court, says:

> "The long use of this species of tenure by our people, the vast amount of property held under it, and involved in and to be affected by the general principle which our courts may establish, as controlling the right of renewal of such leases, have, as it appears to us raised a local equity here equally strong in favor of the lessees, as the like facts and circumstances, more than a century ago, raised in Ireland—an equity which we can not overlook or disregard, and which constrains us to follow, and adopt the more liberal principles and practice of the Irish courts in such cases. In so doing we are in no wise making new agreements for the parties in these cases, but simply enforcing and carrying out what we understand to have been the original intention of the parties to such instruments, and make them subserve the purposes which they were originally designed to accomplish. Nor by this determination are we

> enlarging or extending, the powers of courts of equity, but merely bringing this class of contracts within the acknowledged law of equity jurisdiction, as stated by Judge Story: 'Where the terms of an agreement have not been strictly complied with or are incapable of being strictly complied with; still if there has not been gross negligence in the party, and it is conscientious that the agreement should be performed, and if compensation may be made for any injury occasioned by the non-compliance with the strict terms; in all such cases courts of equity will interfere and decree a specific performance. For the doctrine of courts of equity is not forfeiture but compensation, and nothing but such a decree will in such cases do entire justice between the parties.' Story's Eq., sec. 775."

This local equity applies as strongly to that part of the District Columbia originally included within the limits of the State of Maryland as it does in that State itself. Upon this point Mr. Justice Robb, delivering the opinion of the Court of Appeals of the District of Columbia, says as follows (35 App. D. C., 159, 164):

> "If, on the other hand, it should be held that such sale did not extinguish Blodgett's reversionary interest in said parcels, it is apparent, the ninety-nine-year terms having ended without renewal, that it would require the intervention of a court of equity to afford relief. Banks *vs.* Haskie, 45 Md., 207; Kilbourn *vs.* Sunderland, 130 U. S., 514, 518."

Proposition Eighth.

The Double Aspect of the Bill is Proper.

The main object of the bill was to perpetually enjoin the appellant from prosecuting his pending action of ejectment and from doing any other act to harass the appellees and to cloud their title to said lot 20. The defendant

did not enter his appearance to the cause until publication against him had been made (Rec., pp. 28–30). On March 9, 1906, he did enter his general appearance by counsel and filed a motion to compel the plaintiffs to file as a part of their bill copies of certain documents and instruments of writing referred to in the original bill (Rec., p. 30). A schedule of said documents, etc., was filed with this motion (Rec., p. 31). The court granted the motion (Rec., p. 32), and permitted the plaintiffs to amend their bill by specifying on its margin the liber, folio, and case number of all said documents, etc., which was done. Next, the defendant filed a special demurrer (Rec., p. 33), in support of which he urged that the bill was incomplete and insufficient because copies were not filed of the various deeds, records, and other documents referred to in said bill. As has been said this was a special demurrer directed to the form of the bill, and no other objection to its form has ever been made. On February 28, 1908, the trial court sustained this "special demurrer," with leave to the plaintiffs to file said deeds, etc., as additional exhibits to the bill (Rec., p. 34). This was done, as is shown by the size of the record, of which over 150 pages contain documents which were hardly required to be set out verbatim for any useful purpose. Finally, on October 19, 1908 (Rec., p. 210), the defendant filed a general demurrer in the usual form alleging want of equity and an adequate remedy at law. Therefore no objection to the form of the bill can now be made. If, however, such objection could be made it would be futile.

In the case of *Pullman's Palace Car Company* vs. *Central Transportation Company*, 171 U. S., 138, the Supreme Court of the United States says (p. 149):

> "The facts which were set up in the cross-bill closely affected one of the theories upon which the original bill was filed, viz, the invalidity of the

> lease. They were relevant to the matters in issue in the original suit, and in seeking affirmative relief the cross-complainant is but amplifying and making clearer the foundation for the intervention of equity which had been appealed to by the Pullman Company, and the continued intervention of which would greatly speed a final termination of all matters for litigation between the parties. The court below did not err in permitting the cross-bill to be filed."

That a bill with a double aspect may be filed and alternative relief sought is also established by the following cases:

In the case of *Lewen* vs. *Stone*, 3 Ala., 485, an execution at the suit of S, against the husband of the complainant, having been levied on certain slaves, she filed her bill to enjoin the sale, alleging, first, that she is entitled to a separate estate in the property, under the will of her father; second, if she is not entitled to a separate estate, then, herself and son, by a former marriage, are entitled to an exclusive interest in the slaves, and in virtue of the laws of Louisiana, where she was domiciled, and in possession of them, at the time of her last marriage; and, third, if both the preceding grounds fail, then she claims to hold by the permission of the administrator of her first husband, and as dative tutrix of her son, appointed in Louisiana—the property now having been distributed: The court held that the bill was not demurrable for want of equity, want of parties, or multifariousness; that its purpose was not to put her in the enjoyment of what she supposes to be her right, but to obtain the protective power of chancery, to prevent a disturbance of her possession, and the different allegations are regarded as the assertion of so many reasons why it should be granted.

The same principles were reaffirmed in the case of *Rapier* vs. *Gulf City Paper Company*, 69 Ala., 476.

In the case of *Fields* vs. *Helms*, 70th Ala., 460, it was held that a mortgagor may file a bill in a double aspect, averring full payment of the mortgage debt, and yet offering to pay any balance that may be found due on the statement of the account, and praying for the cancellation of the mortgage, or for an account and redemption.

In the case of *Avery* vs. *Kellogg*, 11th Conn., 562, it was held that where a bill in chancery, after stating the case, prayed for relief by a decree of redemption or specific performance, as the court, upon the facts, should deem proper, the bill was not exceptional as embracing distinct subjects. In this case the objection was not raised until after a hearing upon the merits.

In the case of *Foster* vs. *Cook*, 1st Hawks., 509, it was held that a bill in equity may be framed in the alternative with a double aspect, and relief may be granted in either case, as circumstances may require.

In the case of *Wilhelm's Appeal*, 29 P. F. Smith, 120, it was held that a prayer with a double aspect is not an objection to the bill. Further, that although a question of title may be involved, it is within the jurisdiction of an equity court. Further, that where there is jurisdiction of the subject-matter, equity may determine every incidental question necessarily involved.

In the case of *McConnell* vs. *McConnell*, 11th Vermont, 290, it was held that the plaintiff may draw his bill with a double aspect, so that if he fails in obtaining redress in one mode, he may resort to another in the same suit, and it makes no difference that one ground of claim is wholly inconsistent with the other.

Proposition Ninth.

The Bill Presents a Case Within the Jurisdiction of a Court of Equity.

The bill (par. 11, Rec., p. 11) refers to the notoriety of the Blodgett claim, how it was generally regarded by title examiners as worthless, and so reported, yet was

used to intimidate timid owners and extort money for quit-claim deeds.

It refers to the case of *Johnson* vs. *Van Wyck*, 4 App. D. C., 294 to 329, and avers that, under an intimation in the opinion in that case, the Blodgett claimants undertook to withdraw from that deed and reconvey to Johnson upon certain trusts, freed from the taint of champerty, and it is under that deed that the defendant Camp claims title.

The bill further avers (Rec., p. 13) that while complainants believe that they have a good defense at law against the ejectment, nevertheless their legal remedy is not as full, adequate, and complete as is their remedy in equity, for the following reasons:

1. That plaintiff in ejectment can take a nonsuit and possibly acquire the naked legal title and harass the complainant with repeated actions of ejectment.

2. That if the claim of the defendant that the words "ground rents" do not import in law a fee simple title be well founded, then complainant might be exposed to great delay and expense in resisting ejectment suits and yet in the end be compelled to resort to the equity court to protect their equitable title.

3. That the lessee under each of said leases had the right at any time during the pendency of the lease to purchase the fee on payment of $500.

As the right to receive the rents in perpetuity was sold under the decree in the Bickley suit, there remained nothing in the lessor or his heirs save the mere possibility of naked reversion. If the right of renewal was exercised the reversion would have remained naked and the renewal would have been of no pecuniary benefit to the defendant, because the rents reserved belonged to the grantors of complainants and not to the defendant or to his grantors; and moreover the leases of parcels A

and B were merged. In other words, that as to the mere naked interest left in Blodgett, if any was, he and those claiming under him became trustee for the complainants, and a court of equity will not permit a naked trustee to sue his cestui que trust in ejectment.

The bill further avers (par. 5, Rec., p. 1) that the defendant Camp, on October 8, 1903, filed two suits in ejectment against Pond and Bergling, each a tenant of Willard, in which a part of the lot was sought to be recovered. That of his own motion he dismissed both cases on February 12, 1904, and on the same day instituted an action of ejectment against Caleb C. Willard, who was then living, to recover said lot, said action being No. 26,756, at law, in the Supreme Court of the District of Columbia, and was pending at the time of the death of said Willard.

That on December 22, 1905, the attorney of record for said Camp suggested the death of the defendant Willard, but issued no process against complainants, as his devisees, as is required by section 236 of the Code for the District.

Moreover it appears from the bill (Rec., p. 2) that the defendant Camp is a non-resident of the District of Columbia, being a resident of the State of Pennsylvania.

It is respectfully submitted that the bill shows ample and conclusive grounds for the interposition of a court of equity and requires no elaboration of argument.

In addition to the reasoning and authorities referred to in the opinion (Rec., p. 214) of the court below, we desire simply to call the attention of the court to the case of *Langstraat* vs. *Nelson*, 40 Fed. Rep., 783, in which the court held that where the law gave a party in possession the right to file a bill to quiet title he had a right to do so against a non-resident defendant who had brought ejectment.

The following decisions are conclusive upon the equitable jurisdiction in cases of vexatious litigation, to quiet title and remove cloud from title:

Holland vs. *Challen*, 110 U. S., 15.
Sharon vs. *Tucker*, 144 U. S., 533.

Proposition Tenth.

As the Defendant has Elected to Stand Upon His General Demurrer the Decrees Below Overruling the Same Must be Sustained if Any Ground of Equitable Jurisdiction Exists in the Bill or Any Part of It.

The following authorities are conclusive on this point if, indeed, it is necessary to cite authority iu support of it:

Pacific R. Co. vs. *Missouri P. R. Co.*, 111 U. S., 505.
Stewart vs. *Masterson*, 131 U. S., 151.

It is respectfully submitted to the court that the decrees below overruling the defendant's demurrer were without error and should be sustained.

WM. F. MATTINGLY,
R. ROSS PERRY,
JOHN B. LARNER,
R. ROSS PERRY, JR.,
Attorneys for Appellees.

APPENDIX.

OPINION OF MR. BEVANS.

EDGAR G. MILLER, JR., President.
THOMAS HILL, Vice-President.
JOHN H. DUNCAN, Secretary-Treasurer.
C. A. FAIRBANK, JR., Asst. Secretary-Treasurer.
EDGAR S. BEVANS, Chief Title Examiner.

TITLE GUARANTEE AND TRUST COMPANY

CALVERT BUILDING.

BALTIMORE, *November 18, 1905.*

WILLIAM F. MATTINGLY, ESQ.,
Attorney at Law,
435 Seventh St., N. W.,
Washington, D. C.

DEAR SIR: In reference to the ejectment suit of Camp *vs.* Willard, now pending in the Supreme Court of the District of Columbia, I beg to state that I was unable to take up the consideration of the subject as promptly as I had desired. As, however, you had informed me that there was no urgency in the matter, I suppose that my somewhat delayed reply has not inconvenienced you.

I have found time to examine the abstracts of title and other data which you left with me, including Mr. Perry's Analysis of a number of Maryland cases, in which our Court of Appeals have determined certain questions growing out of the relation of landlord and tenant under ninety-nine-year leases, but none of which are in my judgment entirely apposite to the case under consideration, inasmuch as the parties litigant were, in every instance but one, the owners of the reversion with the incidental

rent on the one side and the leaseholder on the other, the exceptional instance being the case of Abrams *vs.* Sheehan, 40 Md., 446, where the rent reserved on a short term non-renewable lease had been assigned for the term, and the court sustained the assignment, treating the rent thus assigned virtually as a chose in action, which it in fact was. But in none of the cases cited have the courts been called upon to define the character of the estate which passes by the grant, in express terms, by the reversioner, of a "ground rent," reserved on a ninety-nine-year lease renewable forever.

Signification of Ground Rents.

I am frank to admit that the adjudicated Maryland cases are by no means replete with precedents on this particular question or any analogous question, largely due I think to the fact that from long usage and custom the term "ground rent" has acquired such a special, peculiar and well understood significance, that the profession generally have not hesitated to accept a grant in terms of the rent as tantamount to a grant of the fee subject to the lease; in other words, as carrying the incorporeal hereditament known as the reversion. I know from actual experience that it is not uncommon to find among the land records of this city, titles now recognized as fee simple where a lease has been merged and extinguished by a release simply of the rent without an express grant of the reversion, though, of course, no careful conveyancer would prepare a paper intended to accomplish this purpose, without granting the fee of the lot itself, or the reversion and the incidental rent. While as I have before intimated the precise question which we are now compelled to consider, has not been before our Court of Appeals, yet they have decided certain cases, as will hereinafter appear, which by a process of

analogical reasoning would afford strong, if not absolutely conclusive, support to the defendant's case in the present litigation, and which, moreover, in my judgment, show conclusively how this question would be decided if it were to be determined in this jurisdiction.

From the conversation had with yourself and Messrs. Perry and Larner, I assume that you desire us to consider the question from the viewpoint of a real estate lawyer and conveyancer familiar with the subject of ground rents reserved on long term renewable leases, as forms of conveyance peculiar to this State and to suggest such defenses as we may think would effectively meet the plaintiff's suit, or such affirmative remedies as might be available by the defendant to quiet his title and relieve the same from what we consider the unwarranted and grossly inequitable pretensions of the plaintiffs.

Facts of Case.

The facts of the case, briefly stated, as I understand them, and as gathered from the furnished abstracts and other data, are as follows:

A certain Samuel Blodgett, Jr., holding the equitable title to lot No. 20, square 254, in the city of Washington, D. C., the legal title then being vested in the United States, executed on January 28, 1794, to Thomas Johnson, Jr., and Thomas Peter, a deed of the same, with other property, in trust to secure the payment of prizes in a lottery then about to be conducted by or under the management of the said Blodgett. Subsequently Blodgett executed three several leases of portions of said lot No. 20 to James Dougherty, Edward Frethy, and Edward Fennell, respectively, reserving the annual rent of $40 by the first and secondly mentioned leases, respectively, and $24 by the thirdly mentioned lease. The Dougherty

and Frethy leases having been executed in the year 1801, and the Fennell lease in the year 1804, all being for the term of ninety-nine years, renewable forever, the terms have, of course, expired.

The leases so made are in substance analogous to if not quite identical in form with the ninety-year renewable lease in such general use in the city of Baltimore and in other parts of Maryland for more than a century and a half, containing the usual covenants, provisions for re-entry on breach of the covenants and for distress; the Fennell lease being somewhat less formal than the other two and containing no proviso for re-entry to annul the lease on default in payment of the rent, but simply a provision for entry in order to hold the property until all rent and costs are paid.

The chief dissimilarity to the usual form of Maryland lease is the absence of any affirmative and formal covenant for renewal in perpetuity. This, however, may be regarded as immaterial, as the leases in question are none the less renewable forever, inasmuch as they are made so renewable by the grant or demise clauses, which being over the signatures and seals of the parties to the lease, constitute effectual covenants for renewal in perpetuity. These leases also contain covenants by the lessors, their heirs or assigns, to permit redemption of the rents and to convey the reversionary fee simple estates upon payment of $500 for each of the $40 rents and $300 for the $24 rent.

After the execution of the Dougherty and Frethy leases, but prior to the execution of the Fennell lease, to wit on October 9, 1802, a certain Robert S. Bickley, having obtained a judgment in the Supreme Court of Pennsylvania against the said Samuel Blodgett, Jr., for the sum of $21,500 and costs, in a suit growing out of the failure of the latter to honor a drawing made by the former in the aforesaid lottery, filed his bill of com-

plaint in the Circuit Court for the District of Columbia against said Blodgett, Thomas Peter, surviving trustee under the aforesaid deed of trust, Thomas Monroe, superintendent and agent of the affairs of the District of Columbia, in whom was said to be vested the legal title to said property, and other parties representing various interests, praying that the property therein mentioned, including the *aforesaid ground rents*, be sold to satisfy the complainant's claim and for general relief. After process against the defendants and other apt and proper proceeding had in said cause, the court passed its decree on the 4th day of October, 1805, for the sale of said *ground rents* and other property and appointed a trustee to make the same. The trustee so appointed subsequently sold and conveyed two of said *ground rents*, i. e., those reserved on the Dougherty and Frethy leases.

Some years later, to wit, in the year 1810, the sales theretofore made having failed to realize a sum sufficient to satisfy the complainant's claim, a supplemental bill was filed praying for the sale of other property, including the rent reserved by the Fennell lease, and other rents. The supplemental bill, so far as the ground rent question is concerned, was somewhat broader in scope than the original bill, inasmuch as it also prayed for the sale of the reversionary interests as well as the incidental rents. And after other proceedings thereupon had and not necessary here to recite, the property mentioned in said supplemental bill was decreed to be sold and was subsequently sold by the trustee appointed by said decree and conveyed to the purchasers, the report of sale under the supplementary proceedings being apparently unrecorded and missing from the court files. As the reversionary interest under the Fennell lease passed by the decree, the sale and the trustee's deed, and has devolved by mesne conveyance into the present incumbent, it is conceded, I believe, to be free from the

infirmity alleged to exist as to the Dougherty and Frethy lots and may therefore be dismissed from further consideration.

Dougherty, the leaseholder, afterwards by deed from Robert S. Bickley, dated May 1, 1813, acquired the ground rent. It may be noted in passing that this deed, as abstracted, did not constitute a good common law grant in fee, inasmuch as words of inheritance were omitted, the effect thereof according to the then existing Maryland law and presumably the law of the District, was to convey simply a life estate, though perhaps a discussion of this question is not pertinent to the present inquiry.

From the abstracts it appears that the ground rent under the Frethy lease was conveyed by the trustees under the aforesaid proceedings to Robert T. Howe. That Frethy's leasehold interest passed after mesne conveyances to John Thorpe in 1805, who was the last assignee of the leasehold title so far as the records disclose. And that in 1830 the corporation of Washington sold and conveyed the lot for nonpayment of taxes to William Dowling and that Dowling in turn conveyed the same to Robert F. Howe. By a note in the abstract the tax sale, for some reason not assigned, is stated to be void. The tax sale of itself is, however, unimportant except perhaps as establishing, in a measure, evidence of the abandonment of the lot by Thorpe, the leaseholder, whose duty it was under the provisions of the lease to pay the taxes. The entry of Howe into possession of the premises following a breach of the covenants of the lease being equivalent to a reentry under formal ejectment proceedings. Abrahams *vs.* Tappe, 60 Md., 317.

The above mentioned two lots, i. e., the Frethy and Dougherty lots, are now held under a claim of fee simple title by Caleb C. Willard, defendant in the pending

ejectment suit by mesne conveyance from the said Dougherty and Howe, respectively.

Joseph Parker Camp, the plaintiff in the ejectment suit against the said Willard, claims title, as I am advised, by grant from the heirs of Blodgett who at best, after the sales under the case of Bickley *vs.* Peter et al., held the mere naked reversion under said leases.

The somewhat narrow question presented for our consideration is therefore, as I understand it, whether any infirmity now exists in the title of Mr. Willard to said two lots by reason of the fact that in the proceedings in the case of Bickley *vs.* Peter et al., and the sale and decree made by the trustees thereunder, the interests in said lots are designated simply as *ground rent* and because express reference to the reversionary estate is omitted therefrom; and conversely whether there now exists in the said Camp as the assignee of the heirs of said Blodgett such a legal fee simple title, now that the terms of the leases have expired, as would entitle him to recover said lots in ejectment.

In taking up this question, I desire to submit the three following propositions or postulates as a basis for discussion, viz:

First: *That ground rents created by leases for ninety-nine years renewable forever are in a sense peculiar to the State of Maryland and particularly to the city of Baltimore, and that the term or expression "ground rent" has now in this city and State and has had for generations a peculiar and well understood significance as well with the laity as with the profession.*

Secondly: *That leases of this character are perpetual in duration, except on breach of condition, and that the very essence and substance of the estate of the lessor and his assigns is the reserved rent, the reversion apart*

from the rent having no practical value as long as the lease subsists, and that when the rent is extinguished the reversion falls with it.

Thirdly: *That the absolute and unqualified conveyance of a ground rent of this character implies an intention to convey the ground subject to the term, i. e., the reversion.*

Under the first proposition it may be profitable to make a brief inquiry into the origin and early history of the long term perpetual lease now in such general use in this community.

History of Ground Rents in Maryland.

As I have heretofore stated this form of lease is peculiar to Maryland, so far as this country is concerned; certainly no complete analogy to it has been discovered elsewhere unless it be the Irish lease; though in Ireland renewable leases have probably not been in such extensive and general use as in this State.

The late Lewis Mayer of the Baltimore bar, a gentleman of considerable erudition in real estate law and a painstaking investigator of colonial tenures and matters of like character, in a somewhat brief treatise entitled "Ground Rents in Maryland" published in 1883, states his opinion to be that this form of lease was evolved from the Irish lease, and that the idea was probably introduced into Maryland by lawyers who, like Daniel Dulaney, the eminent lawyer of the eighteenth century and Charles Carroll, Barrister, had studied at the Inns of Court in London and doubtless were familiar with the Irish form of lease.

Mr. Mayer states that the Irish leases for ninety-nine years were determinable on three lives, the latter being arbitrarily considered perhaps as equivalent in duration to the former, and being determined on lives, were, for

that reason, by some authorities considered to partake more of a freehold than of a leasehold character.

Leases for ninety-nine years without covenants for renewal were not so uncommon in England, and prior to the year 1750 leases of this character without covenants for renewal were made in Maryland and copies of two such leases are set out in the report of the case of McComas *vs.* Bradford, 3 H. and J., 444.

But the salient point of dissimilarity between all these various form of leases, other than the Irish lease, and the ninety-nine year lease now in vogue in this city and State, is the almost general absence from the former of the covenant for renewal in perpetuity.

The grants by the Lords Proprietary of the Maryland Colony reserved annual rents known as quit rents and while distress was incident thereto, the grants were made to the grantees and their heirs in fee simple or in fee tail, the payment of rent being chiefly made as a recognition of tenure. Quit rents were abolished in 1780 and of course bore no analogy to rents reserved on perpetual lease.

The earliest leases for ninety-nine years in Baltimore of the form now in general use, were made about the year 1750 by Thomas Harrison, a large landed proprietor in or near the eastern section of old Baltimore Town. The lots so leased lay along or near the bed of Jones' Falls in the territory then known as Harrison's Marsh, now a very populous part of the city. In the succeeding twenty years William and Edward Fell made many such leases on Fells' Prospect, then some two miles from the limits of Baltimore Town, but now comprising a thickly settled portion of the city. Shortly thereafter John Eager Howard, the Carrolls, Ridgelys, and other large land owners, made many leases of this identical kind, the custom by this time having become general.

We also occasionally meet with instances among the Baltimore City and County land records of leases for 9,999 years renewable forever; vide liber W. G., No. 160, folio 159, and W. S. 166, folio 644, which of course do not differ in principle from the ninety-nine-year renewable lease.

The original object of the renewable lease was the creation of a perpetual tenancy. Taylor *vs.* Taylor, 47 Md., 298. And, as Mr. Mayer states, the reversion of the fee to the lessor, his heirs or assigns, was most likely not contemplated. The right of renewal was enforcible in equity, even though the lease had expired, unless the lessee or his assigns were guilty of gross laches, and that, too, against the strict letter of the covenant which provides for a renewal on application during the term. Banks *vs.* Haskie, 45 Md., 218.

The owner of the land, in making these leases, virtually intended to lend out the land perpetually at interest, paying no taxes (taxes in all instances being covenanted to be paid by the lessee and his personal representatives and assigns) and receiving a fixed income which could be granted in fee or would descend to his heirs. This method of conveyance became a favorite form of investment soon after the year 1750 and subsequently prevailed to an extent so universal that it is now difficult to discover a lot of ground which at some period in the history of its title has not been under a long term renewable lease, and in many instances there may be several coexisting subleases affecting the same lot.

In the second proposition, I have stated that the essence of the renewable lease from the standpoint of the lessor is the rent; certainly the original purpose of the lease is the reservation of the rent as a permanent investment, the naked reversion for all practicable pur-

poses being a negligible quantity so long as the lessee observed the covenants and conditions of the lease, and even where those have been broken, courts of equity have always been ready to relieve against forfeiture and to allow compensation for the breach; this had been done in England as far back as the year 1717. See the case of Anderson *vs.* Sweet, cited by Judge Alvey in Banks *vs.* Haskie, *supra*, where Chief Baron Gilbert, in the Court of Exchequer (approved by the Lords in 1722), allowed a renewal after the expiration of the term upon payment of a fine.

It will be observed that in this form of lease the covenants and conditions are framed solely with a view to secure the payment of the rent; in none of them can a condition be broken except by default in payment of the rent, or payment of taxes, the latter being made to preserve the integrity of the net annual rent. Occasional instances are found of covenants to insure the improvements against loss by fire, but this is only another means of protecting the security of the rent. Rent, therefore, must be considered as of the very substance of the lease, and for all practicable purposes the lessee is the owner and possessor of the property subject to an annuity.

In the case under consideration the rents had been conveyed to the leaseholders, i. e., redeemed or bought out with the view to extinguishment; and the grantees and their assigns, from a period early in the last century, have asserted a fee simple title to the ground; it is therefore inconceivable under this state of facts and from the viewpoint of a Maryland conveyancer that any court would seriously countenance an attempt on the part of the grantee of the heirs of the bare reversioner to disturb the title so acquired.

I feel that I am reinforced in this conclusion by the reasoning of our Court of Appeals in the late case of

Jones *vs.* Rose, 96 Md., 483, which establishes the doctrine, whatever doubt in this respect may have existed theretofore, that where the rent on a perpetual lease is extinguished the reversion is destroyed also; or, to state the proposition in another form, the leaseholder may become vested with the fee by a grant of the rent or an extinguishment thereof, without an express grant of reversion. I do not mean to be understood as holding that in all cases the rent and reversion can not exist apart and in different ownerships; on the contrary, this is not infrequent, but occurs however most frequently in the case of nonrenewable leases, as where the lessor assigns the rent for a part of the residue of the term, the right so assigned being simply a chose in action, and the remedy for enforcement being similar to other remedies for the recovery of personal debts Abrahams *vs.* Sheehan, 40 Md., 446.

And again it is conceivable that the reversion and rent under a renewable ninety-nine-year lease may be separately assigned according to the expressed purpose and intention of the parties to the assignment; but the idea which I desire to emphasize is that the owner of a leasehold term under such form of lease may become vested with the fee simple title to the ground by a grant or release to him of the rent without an express grant of the reversion, and that the release or extinguishment of the rent abolishes the conditions of the lease and exhausts the rights of the reversioner. As before intimated this idea is exemplified by the opinion of the Court of Appeals in the above mentioned case of Jones *vs.* Rose. The facts leading up to the question in that case are somewhat complex and as Chief Justice McSherry said in the beginning of his opinion—an examination of the various conveyances set out in the record "was neither a very interesting nor a very exciting task." Substantially however, the facts in the case are as follows: The own-

ers of land which was subject to an old ground rent united in a deed of partition by which that rent was charged upon a certain part of the land and the rest of the land exonerated therefrom. Subsequently one of the parties to this deed acquired the outstanding ground rent and conveyed the same to some of the other parties to the deed of partition, and these grantees afterwards executed a deed, conveying the rent to the owners of the lot upon which it had been expressly charged in the deed of partition, i. e., lots 19, 20, and 21. Thereafter the owner of Lot No. 4, said lot being a part of the ground which had been, under the arrangement between the leaseholders, exonerated from the rent, and which owner had never received a grant of the reversion, sold said lot as fee simple; upon the purchaser objecting to take the title as being technically leasehold, the vendor filed a bill in equity to specifically enforce the contract. In the course of the unanimous opinion of the court as delivered by Chief Judge McSherry it was stated that if there is no outstanding ground rent on the premises the vendors confessedly have a fee simple title, and further that as the owners of that portion of the leased lot which had been obligated to pay the ground rent, had afterwards acquired the rent, they and their privies in estate were estopped to claim that the rent was collectible from that part of the land which had been exonerated therefrom; that consequently the rent was extinguished and the title of Lot No. 4 was a good and marketable one in fee simple; the court accordingly granted the relief prayed in the bill.

So you will observe that this was a positive affirmance of a fee simple title where the rent had been extinguished, but the naked reversion had never become vested in the incumbent of the title, except upon the principle of equitable estoppel, or rather that as the

owner of the reversion was estopped to collect the rent, the reversion was destroyed.

As to the third proposition involving the principle of the intention of the parties as a controlling factor of the grant; I think it may be reasonably assumed from all the circumstances of the transaction, that when Bickley instituted the suit to subject the property of Blodgett to the payment of the judgment claim, he intended that all the defendant's property, if necessary, should be applied to that purpose. This is apparent from the fact that when the sales made under the original proceedings had failed to accomplish this purpose he instituted supplementary proceedings to subject other and subsequently discovered property of the defendant to the satisfaction of his claim; certainly it would be idle to assume that either the plaintiff or the draftsman of the bill, decree and other proceedings in that cause had intended to separate the rents from the reversions, subject them only to the plaintiff's debt and allow the reversions to remain intact and undisturbed in the ownership of the defendant Blodgett; this, however, would be the logical result if Camp's suit were to prevail. Taking into consideration the peculiar significance of the term or expression "Ground Rent" as used in Maryland, I think it is now an almost indisputable proposition that when a ground rent is sold or conveyed the vendor intends to sell and convey the lot subject to the lease, that is to say, the reversion with its incidental rent; certainly no Maryland lawyer would dispute the proposition that if a vendor had contracted in terms to sell a ground rent reserved on a renewable lease, a court of equity would hesitate to enforce the conveyance of the reversionary estate in the lot so leased. Fortunately our Court of Appeals have not left us without a precedent on this phase of the question, as will appear from the decision

in the case of Ogle et al. *vs.* Reynolds et al., 75 Md., 145. The facts in this case were substantially as follows: A certain Harriet A. Hayden by her will devised several ground rents arising and payable out of certain lots in Baltimore City, in the following manner, viz:

"First. The one at the corner of Eutaw and Biddle streets, to pay my funeral expenses.

"Second. The next or second ground rent to be used to buy and put up a tomb, etc.

"Third. The next or third ground rent to be used for the same purposes as that mentioned in the second clause if the other two rents should be insufficient for that purpose."

The executors of the will, under the implied power of sale, which the court subsequently held to be vested in them, sold the reversionary interest of the testatrix in the three lots of ground out of which the rents issued. The sales were reported to the Orphans' Court under a statutory requirement. The purchasers excepted to the ratification of the sales, assigning as one of the reasons for their exceptions, that the testatrix did not mean that the reversionary interests in the lots should be sold, but that the accrued rents only were to be applied to the purposes mentioned in the will.

The court overruled the exceptions and sustained the sales, stating in the course of the opinion that if the contention of the appellees (purchasers) to the effect that the testatrix meant that the annual rents issuing out of these lots should be applied to the purposes specified in the will, be sound, there would have been an intestacy as to the residuary interest in the lots, and this the court could not for a moment suppose she intended. The court further said:

"Primarily ground rents mean, it is true, the rent payable to the lessor, but at the same time it must be conceded, that the reversionary interest in the lots thus

leased *is generally* designated and known as 'ground rents.' And as used in the will before us, it is clear that the testatrix meant that the reversionary interest which belonged to her should be sold and the proceeds applied to the purposes mentioned in the will and did not and could not have meant the rents issuing out of the lots."

It will be observed from a perusal of this case that the contention of the exceptant was in effect that the fund to be applied to the purposes of the will, was in the contemplation of the testatrix to be raised from the ground rents as they should accrue.

I have sought thus far in this discussion, to impress upon you how, in my opinion, our courts would solve the question involved in this suit; desiring to supplement this with the opinion of a representative local real estate lawyer, I took occasion a few days since to submit the facts in the present case to a well-known conveyancer of this city, a man of very extensive experience in title examination, whose opinion is frequently sought on nice questions of real estate law. I stated the facts leading up to the present litigation without mentioning the jurisdiction in which the question would be determined. In response he expressed the utmost surprise that any lawyer would have the temerity to institute a suit in ejectment on a foundation so flimsy. When I later informed him that the question had arisen in the courts of the District of Columbia he none the less thought that the plaintiff would be laughed out of court. I mention this to illustrate how well grounded among the members of the local profession is the idea that the term "ground rent" is synonymous with "reversion and rent."

Of course I realize that while you may feel convinced that the courts of this State would summarily dispose of this question favorably to the defendant, you may

have a doubt as to the probable outcome in the courts of the district where the ground rent system has prevailed to a very limited extent if at all.

Mr. Perry, at our conference, suggested the question as to whether it would be admissible at the trial of the case to offer evidence of a custom or usage prevalent in Maryland with regard to the expression "ground rent" as broadly signifying the entire estate of the reversioner in the leased lot, and whether such evidence would be available if desired. I can answer that there would certainly be no difficulty in securing the attendance at the trial of expert witnesses from Baltimore City along this line, but at the same time I think it very doubtful that testimony as to a custom prevalent in one community with regard to the significance of terms and expressions would be admissible in a trial in another community, even though the latter community existed in territory which was derived from territory in which the first-mentioned community existed. I have no doubt, however, that the decisions of the highest tribunal of this State in cases growing out of conditions peculiar to Maryland would be treated with the utmost respect, if not as absolutely binding precedent, by the courts of the District of Columbia, and with additional weight from the fact that the District is comprised of territory ceded from Maryland long after the ground rent system had become a fixed institution generally throughout the State, and of course more particularly in the city of Baltimore.

I assume that after fully considering the above cited cases of *Jones* vs. *Rose*, *Ogle* vs. *Reynolds*, and *Banks* vs. *Haskie*, that you will have little, if any, difficulty in reaching the conclusion that the pretensions of the plaintiff, Camp, are entirely unwarranted, and should receive no consideration by the courts of a modern community like that of Maryland or the District of Columbia. Such

pretensions savor more of the hard and technical claims set up in some of the old cases instituted in the law courts of medieval England before the modification of feudal rules.

What I have heretofore stated has related principally to the character of the defendant's title; it may not be now amiss to inquire into the status of the plaintiff's title. As this is an ejectment case, it is of course necessary that the plaintiff should show a good legal, and not a merely equitable, title in himself before his plea may be allowed to prevail in such a suit. This is, of course, a cardinal principle. Leonards, lessee, *vs.* Diamond, 31 Md., 536; Winter *vs.* White, 70 Md., 305; and numerous other cases not necessary here to cite. The question, therefore, at once arises as to whether Camp as the successor in title to Blodgett can show such a title.

It will be remembered that Blodgett at the time of the institution of the suit by Bickley had simply an equitable title, the legal title being then vested in the United States, and it is equally clear that this legal title was never expressly or directly conveyed by the United States, or its commissioners, to Blodgett. It is true that the United States, through its commissioners or agents, was a party to the Bickley suit, but that suit was solely for the purpose of effecting a sale of Blodgett's property. All the title of the United States and Blodgett, unless restricted by the narrow construction put upon the term "ground rent" passed to the purchasers under that case. It certainly did not follow, in view of the character of the trust existing in the United States in favor of Blodgett, that because the purposes of the suit by Bickley against Blodgett were fully subserved that therefore the reversions in these leases (if they did not pass under the decree) were relegated to Blodgett. The only method by which the legal title theretofore existing in the United States could have resulted to

Blodgett would have been, if at all, by force of the Statute of Uses, there being no active duty to perform. The title, in our opinion, did not so result because of the fact that the trust upon which the United States held the title for Blodgett was not an express but an implied or constructive trust, and it is well settled that the Statute of Uses does not execute trusts of this character. 2 Washburn's Real Property, folio 503.

So I think it worth while in this case to raise the question of the sufficiency of Camp's title as plaintiff in ejectment. Nor do I think that this in anywise contravenes the well-settled principle that a tenant can not deny his landlord's title. We do not recognize Camp as the landlord of the fee, and if he were it is certainly permissible to deny that he holds the legal title. For even in an ejectment suit under the Landlord and Tenant Act as applicable to Maryland, which is virtually the Statute of George II, chapter 28, with modifications, the plaintiff must show a good legal title. I assume that the Laws of Maryland and the British statutes in force in Maryland at the time of the cession of the District of Columbia to the United States by Maryland, are in force in the District except as modified by act of Congress.

Right to Renewal of Lease in Equity.

I now come to the question of the feasibility of taking up the question collaterally by application to a court of equity for relief against the vexatious pretensions of the plaintiff in the ejectment suit. Incidentally I may say that under a local statute, act of 1888, chap. 547, Code of Public General Laws, article 75, section 73, the defendant in ejectment may plead equitable defenses. This method of defense would not, however, avail you in this suit, as the Supreme Court of the United States has decided that equitable defenses will not be allowed in

Federal procedure in ejectment cases, notwithstanding the provision of the law of the State in which the Federal Court sits, provided that in such suits an equitable defense may be relied on. Fenn *vs.* Holmes, 2 Howard, 482 (Missouri); Hooper *vs.* Shimer, 23 Howard, 249 (Arkansas); Sheirburn *vs.* Cordova, 24 Howard, 425 (Texas).

We do, however, feel assured that it would be permissible to apply for equitable intervention in a collateral proceeding. All the equities of the case are with the defendant, Willard. The relation of Camp, the plaintiff, to the title of the property in question, if any relation can be said to exist, is simply that of a trustee for Willard, whose predecessors in title bought out the rents undoubtedly upon the assumption that they were acquiring, under the designation of ground rents, the reversionary fee simple title to the ground, and it may be equally as well assumed that they paid the purchase money on that basis. Camp's title, upon this theory, can be no other than a dry trust. We have little doubt, if any, that the chancery branch of the Supreme Court of the District would entertain a suit by Mr. Willard to enjoin the further prosecution of the ejectment, as being vexatious in character.

If, however, you and your associates feel any doubt as to the ultimate outcome of the cause, through fear of a too rigid adherence by the court to common law rules in this particular form of action, our advice is that you file a bill on the equity side of the court. In fact it is our opinion that this should be done in any event to forestall the ejectment case; and for obvious reasons an equity court would be the proper forum from the standpoint of Mr. Willard's interests for the adjudication of the rights of the parties. This bill, after setting up the equities of the complainant, should pray for a restraining order against Camp as plaintiff in ejectment, and for the appointment by the court of a trustee to convey the

naked reversion to Willard for a sum to be ascertained and determined by the court, which sum, in our opinion, should be nominal or at least not very substantial. The soundness of this suggestion seems to us to follow logically from the consideration of the following propositions, namely:

There can hardly be a doubt that if a reversionary estate in the lots in question is to be treated as outstanding in Camp, the Supreme Court on its equity side would, on the application of Mr. Willard as technical lessee, decree a renewal of the lease even though the term had expired, as it would be impossible under all the circumstances of the case to impute gross laches to the applicant for renewal. The court could not fail to so decree without absolutely disregarding such well considered cases as Banks *vs.* Haskie and the English cases therein referred to, especially the decision of Chief Baron Gilbert in the case of Anderson *vs.* Sweet, *supra*.

The renewal being accomplished the right of redemption would at once accrue under the covenant made by the lessors running with the land and binding themselves, their heirs and assigns. Now, while the covenants in both the Frethy and Dougherty leases obligated the lessors to convey the fee at any time upon the payment of the sum of $500 in each instance, these covenants as read in connection with the last covenants in the leases necessarily relate to the privilege of the redemption of the rent. In the Frethy lease the payment of the said sum by the express terms of the covenant extinguishes the rent and destroys the penalties and forfeitures named in the lease, and "the property becomes the sole right of said Frethy, his heirs and assigns." In the Dougherty lease the payment extinguishes the rent simply and destroys the penalties and forfeitures.

As the application for renewal of the leases on nominal rents followed by a separate application for a conveyance of the naked reversions for nominal sums would

be an idle circuitous action, we think the proper form of proceeding would be a direct one as above suggested for the conveyance of the outstanding naked reversion or such estate, if any, as the court may decree to exist in the defendant for a sum to be determined by the court, and even in the still more remote event of the recovery of the ground in question by Camp as a fee simple lot unencumbered by the lease, he would under the Maryland rule, and I think this rule generally obtains, be entitled only to the value of the land, as such, because the improvements thereon had been erected in good faith by Mr. Willard or his predecessors; the latter would be allowed the value of his improvements, or conversely he would be allowed to pay the value of the land to the plaintiff as ascertained by the court, he, Willard, retaining the improvements.

It will be an extraordinary surprise to us if Mr. Willard is not successful in this litigation in whatever form it may take, and our interest in the matter will continue until its final determination. I will appreciate, therefore, if you will advise us of the final outcome.

I will return your abstracts of title and the other papers left with us, by express.

Very truly yours,

EDGAR S. BEVANS.

Analysis of Cases of Myers vs. Silljacks, 58 Md., 319, and Presstman vs. Silljacks, 52 Md., 647.

The case of *Myers vs. Silljacks*, 58 Md., 319, can be understood only in connection with that of *Presstman vs. Silljacks*, 52 Md., 647. Both cases grew out of the same controversy. *Presstman vs. Silljacks* presented the legal, and *Myers vs. Silljacks* the equitable, aspect of this controversy. This fact is referred to by Alvey, J., in his opinion in the case of *Myers vs. Silljacks*, 58 Md., 322. This controversy arose as follows:

One Edward Fell was, more than a century ago, the owner in fee simple of certain real estate situated in the city of Baltimore, State of Maryland. He devised that part of said estate which became the subject of controversy to his son, William, and gave to his wife Anne Fell, who was his executrix, power of leasing the estate, so devised, for the benefit of the son. She, on July 5, 1769, by lease in due form, demised these premises to Alexander McMechen, for ninety-nine years, with the usual covenant for renewal forever (upon the payment of the rent reserved, and the amount stipulated as the price for renewal), upon reasonable demand, at any time during the term created by the lease.

52 Md., 654-655.

History of Reversion or "Ground-Rent."

This left the reversion in fee or "ground-rent" in William Fell. Its course of transmission is given in detail in the opinion of Mr. Justice Alvey in the case of *Myers vs. Silljacks* as follows (58 Md., 324-325):

> "Turning now from the line of transmission of the leasehold estate to that of the freehold or reversion, we find that in 1792, William Fell, having died seized of the reversion in lots Nos. 124 and 125, his reversionary interest in those lots, with other real estate of the deceased, was sold

by a trustee under a decree of the High Court of Chancery; and the reversion in lot No. 125 was sold to Isaac Van Bibber, and a conveyance therefor was made to the purchaser by the trustee, on the 20th of February, 1793. The consideration for this reversionary interest in lot No. 125 is stated to have been eighty-one pounds, current money; and special reference is made in this deed to the lease from Ann Fell to McMechen. It is expressly stated that the reversion was conveyed subject to the term, which was stated to be at an annual rent of £3 10s. and also subject to all the covenants and conditions of the original lease, with the right to receive the rent apportioned to that lot. Thus plainly showing, that while the entire original rent reserved for the three lots had been apportioned, either by operation of law, or by the act and consent of the parties concerned, there was no intent or effective agreement on the part of the owner of the reversion, either that the lot should be released from the apportioned rent, or that it should be held by the assignee of the term, upon any other terms and conditions than those of the original lease.

"In 1825, Isaac Van Bibber died; and thereupon the reversion in lot No. 125 devolved on his son, Washington Van Bibber, by devise; and upon the death of the latter in 1846, intestate, his real estate was partitioned, and the reversion in lot No. 125 was assigned to Nannie Van Bibber; and she, in 1851, conveyed this reversionary estate, together with all arrearages of rent incident thereto, to William Dawson. Sometime after the expiration of the term in 1868, Dawson died; and in 1877 George H. Williams, as trustee under the will of Dawson, and the widow of the testator, sold and conveyed lot No. 125 to the present defendant, Silljacks, together with all the arrearages of rent due from former tenants thereof. This is the title asserted by Silljacks in the case in 52 Md., before referred to, and which was

> adjudged by this court to be good and valid as against Presstman, notwithstanding Silljacks had been and was tenant of part of the premises, at the time of the expiration of the original term in 1868, holding by assignment, under a renewable lease or demise previously made by Presstman, as if he, Presstman, had been owner of the fee simple estate in that portion of the lot."

It thus appears that the reversion or "ground-rent" in these cases was regularly transmitted by repeated conveyances from William Fell, who died seized thereof in 1792, and his successors in title, to George H. Williams, trustee under William Dawson's will, who, together with Dawson's widow, conveyed it to Silljacks in 1877.

In the case at bar the "ground-rents" were sold, as appears from the record (under the court proceedings in a judgment creditor's bill of Bickley), the early part of the last century. Under this sale the appellees here claim title.

All that appears from the record as to the title of the appellant Camp, is the following averment in the bill (Rec., p. 123):

> "Twelfth. That the complainants aver upon information and belief that the said defendant Camp claims that he is the assignee of the heirs at law of the said Blodgett."

The course of transmission of this leasehold interest is also given by Judge Alvey in the same opinion (58 Md., 322):

History of Leasehold Interest.

> "The lease from Fell to McMechen, bearing date the 5th of July, 1769, was for the term of ninety-nine years in three adjacent lots, Nos. 123, 124, and 125, at an entire annual rent of £10 10s.

The term expired on the 4th of July, 1868. The lease contained the usual covenants found in leases made for lots in Baltimore at the time, and such covenants appear to be in all respects similar to those contained in the lease involved in *Banks vs. Haskie*, 45 Md., 207. The lessee for himself and for his assigns covenanted that he or they would well and truly pay each year the rent reserved, to the lessor, her heirs and assigns; and that it should be lawful for the lessor, her heirs or assigns, to distrain in and upon any part of the demised premises for the rent reserved, upon non-payment thereof. The lessor then for herself, her heirs and assigns, covenanted with the lessee, his personal representatives and assigns, that she, her heirs or assigns, would, upon the request and at the cost and charge of the lessee, his representatives or assigns, and upon payment or tender of the sum of £10 10s., as and for a fine for a renewal 'at any time during the continuance of this present demise, make and execute to him, the said Alexander McMechen, his executors, etc., or assigns, so requesting and paying, or tendering as aforesaid, a lease or demise of the said demised premises for ninety-nine years, to take effect and commence at the end of the term hereby demised, at and upon the same rent, and with and under the like covenants, provisos, and agreements, as are herein contained, so that this present demise shall and may be renewable and renewed forever.'

"It is admitted that lot No. 123 was subsequently assigned by McMechen, subject to an apportioned rent of £3 10s.; and that afterwards this lot was surrendered to William Fell, who was then entitled to the reversion. This left the other two lots, Nos. 124 and 125, subject to an entire annual rent of £7, the entire rent of the three lots having been thus apportioned, with what would appear to have been the assent of the reversioner.

"In 1774, McMechen, the original lessee, assigned one-half of lot No. 124 to Basil Lucas,

subject to a rent of £3 10s., and the other half of that lot he assigned to William Morris, subject to a like rent of £3 10s., and in both of these assignments the assignees covenanted to pay the rent thus reserved to the assignor, his representatives or assigns. Lot No. 125 the lessee assigned to William Levely, and subsequently took from Levely a reassignment thereof. He then assigned the term in that lot to John and James Sterrett, and also the rents reserved out of lot No. 124; and the assignees covenanted to pay the annual rent of £7 to such person as might be entitled to receive the same, and for every renewal of the term the further sum of £7. John Sterrett having died, James Sterrett, as survivor, assigned the term in lot No. 125 to John Steele. This assignment was made in 1792, and in the instrument full recitals are made and the title deduced from the original lease of Ann Fell of the 5th of July, 1769. In express terms this assignment conveyed and transferred the unexpired term in lot No. 125, and clearly showed that it was but a leasehold estate that was the subject of the assignment. This assignment was, as had been all the preceding assignments of the term, duly recorded as required by law.

"It would appear that John Steele died about the year 1809; and in 1841 a decree of the High Court of Chancery was passed for the sale of his real estate, and under that decree the interest of the deceased in lot No. 125 was sold by a trustee. It appears to have been treated as part of the real estate of the deceased, though it was in reality but leasehold estate. It is under this sale that the present appellants claim, and the conveyances made by the trustee, for the two parcels in which lot No. 125 was sold, speak of and describe the interest or estate sold as part of the real estate of John Steele, deceased. But, as we have determined in the case at law, before referred to, this mistake or misconception as to the nature of the estate sold could not operate to make that

> freehold estate which was in reality only leasehold estate; and that the sale and conveyance by the trustee could only operate as an assignment of the leasehold interest of which John Steele died possessed."

Turning now to the opinion of the court in the case of *Presstman vs. Silljacks*, 52 Md., 647, we find that the further transmission of the leasehold interest was as follows (p. 655):

> "By proceedings for the sale of his (Steele's) real estate, a decree was obtained, and Charles F. Mayer was appointed trustee. This leasehold estate was included in the decree for sale, and was sold by said trustee to the appellant. In the deed to the appellant it is spoken of as real estate, but by the special description of it in the deed and the references, it is fully identified as this leasehold property coming from Anne Fell, lessor. Clothed with the fee, as it is alleged he supposed himself to be, by this deed from Charles F. Mayer, although in fact he had but the unexpired time that remained of the lease, on May 15th, 1852 (when his estate consisted of only seven years of unexpired leasehold with privilege of renewal), the appellant executed a lease to Henry Straus and others for ninety-nine years, renewable forever. These lessees assigned to Adam Senz, and he assigned to Silljacks, the appellee."

Down to this point it appears that the leasehold interest was regularly transmitted to Presstman and that he, thinking himself seized of the fee, himself executed a lease to Henry Straus and others for ninety-nine years, renewable forever, and that Silljacks became the assignee under this lease.

> "Silljacks, afterward, having refused to pay the rents reserved in Presstman's lease, the appellant levied distresses. Silljacks replevied the

property distrained in each case, before a justice of the peace. One justice decided in favor of Silljacks and the other in favor of Presstman. Both appealed to Baltimore City court, wherein the decision in each case was adverse to Silljacks, and he paid the judgments and costs. It is for the entry thus made, in making the distresses, and the payments to which he was wrongfully constrained, that the appellee brought his action of trespass in the Superior Court of Baltimore City. He recovered and the defendant appealed" (pp. 655, 656).

This appeal was the foundation of the case of *Presstman vs. Silljacks*, 52 Md., 647. Upon this appeal Presstman contended:

First, that he had a fee in the property of which Silljacks was tenant;

Second, that Silljacks could not deny his title, nor his right to levy the distresses;

Third, that the whole matter was *res adjudicata*, by reason of the replevin suits, the appeals to the city courts, and the judgments therein in favor of the appellant.

The Court of Appeals, however, decided:

First, that Presstman did not take a fee in the property from the deed to him of Charles F. Mayer, trustee (p. 656);

Second, that Silljacks was not estopped to dispute Presstman's title although Presstman was his landlord, (p. 656);

Third, that the replevin suits, the appeals to the city Court, and the judgments therein in favor of Presstman were not *res adjudicata* (p. 660).

The Court, therefore, affirmed the judgment in favor of Presstman. The result of these proceedings was to affirm the validity of the conveyance of the reversion or "ground-rents" from George H. Williams as trustee

under the will of Dawson, united in by the widow of Dawson, to Silljacks, made in 1877. This was the end of the law case of *Presstman vs. Silljacks*, 52 Md., 647.

Thereupon, Presstman, on February 18, 1880, filed a bill in equity against Silljacks to obtain the specific performance of the covenant of renewal contained in the original lease from Anne Fell to Alexander McMechen, dated July 5, 1769. On the 8th of November, 1880, Presstman died and Myers and others, administrators c. t. a. of Presstman, were substituted parties complainants to the bill. The Court below passed a decree dismissing the bill, being of opinion that the complainant (Presstman) had not only been guilty of laches in omitting to claim a renewal within a reasonable time, but had maintained an active resistance to his landlord which deprived his claims of favorable consideration. Thereupon, an appeal was taken to the Court of Appeals of Maryland and this appeal constitutes the bill of *Myers vs. Silljacks*, 58 Md., 319. The decision of the Court of Appeals affirmed that of the lower Court upon all the grounds stated. The *laches* in the case are stated by the Court in its opinion (p. 333), as follows:

> "Here, as already stated, nearly twelve years had been allowed to elapse after the termination of the lease, before the application was made. No rent had been paid by Presstman prior to the expiration of the term, and none since; and, in the meantime, all right and title of the reversioner was, up to the time of filing the present bill, openly denied, and utterly set at defiance. Not only was the right of the reversioner or owner of the fee denied, and all relation with him disclaimed by the testator of the present appellants, but that right was contested in repeated litigations in which the testator was an active party."

In the case at bar the Dougherty lease expired April 13, 1901, the Frethey lease April 14, 1901, and the Fennell lease April 20, 1904. Willard, the devisor of the appellees, had no knowledge of any claim on the part of Camp until October 8, 1903, when two actions of ejectment were filed by Camp against two of Willard's tenants. These actions Camp of his own motion dismissed on February 12, 1904. On the same day Camp instituted the third action of ejectment against Willard himself (Rec., pp. 2-3). Willard died on August 2, 1905 (Rec., p. 2). The bill in equity in the pending case was filed by his devisees in trust on the 22d of January, 1906. The special circumstances relating to even this delay are specially set forth in the bill (Rec., pp. 13, 14).

The opinion in the case of *Presstman vs. Silljacks* is very strong in favor of the appellees upon the second point involved in that case and also in the case at bar. The point there was that the appellee being a tenant of the appellant could not dispute his landlord's title. The Court of Appeals of Maryland consider this question at pages 656 to 661 in the case of *Presstman vs. Silljacks*, 52 Maryland, 647, and hold as follows (p. 656):

> "The general rule is, without doubt, that a tenant can not dispute his landlord's title—that he is estopped by having accepted a lease. That estoppel has been long, if not always, held to be restricted to the denial of the landlord's title at the time he made the lease, and the tenant entered under it; and both in suits for the recovery of rent, and in actions of this character, the tenant has been permitted to show, by way of defense, that the title of his landlord, which existed at the time the tenant entered under him, has expired by effluxion of time."

At page 658 the Court say:

> "In this country the decisions are numerous wherein the tenant, under circumstances like

this case presents, has been permitted to show that his landlord's title has expired, or been transferred, or defeated. In *Duff vs. Wilson*, 69 Pa. St., 316, Judge Sharswood says, 'It is always competent for a tenant to set up that the title of his landlord has come to an end subsequent to the date of the lease; and that whenever the enjoyment ceases by lawful title, rent, which is the recompense of enjoyment, also ceases.' "

Again this case is very valuable as an answer to the contention that the tenant must give up possession of the leased premises before he can assert adversely to his landlord. The Court says (p. 658):

"But it is insisted that before the tenant can avail himself of this privilege, he must solemnly and formally renounce his allegiance to his landlord, and formally attorn to someone else. Tindall, Justice, in *Claridge vs. Mackenzie*, says, that was the opinion of Lord Ellenborough in *Balls vs. Westwood*, but that he subsequently altered it. Coleridge, J., in *Mountnoy vs. Collier*, says: 'I think it would be hard upon a tenant, if, in order to enable him to do this, he was obliged in all cases actually to go out of possession; and that, if there is a new arrangement with the person who really has the title to hold under him, it should be equivalent to going out of possession.' And in the same case, Earle, J., in a concurring opinion, said, 'the main question is whether the defendant may show that as a defense, he not having given up possession. I think it is competent for him to do so; for a tenant is liable to the person who has the real title, and may be forced to pay him, either in an action for use and occupation, or in trespass for the mesne profits.' *Shields vs. Lozear*, *supra*, is authority to the same effect. The facts of this case bring it within the principles thus decided. The fact that he purchased the outstanding title as he did, when he did, which is pressed by the appellant against him,

does not affect the question nor his rights in this case. The question here is, can he show the expiration of the appellant's title and right to claim rent from him, which upon the authorities cited we think he may do. He has paid to the reversioner the arrearages of rent for the whole period of his holding under Presstman, after Presstman's title expired, together with the rent for the time he repudiated Presstman's title. This certainly was a recognition of the reversioner's right, and equivalent to an abandonment of possession under Presstman. For an additional consideration he takes the conveyance of the reversioner's title. Ordinarily, fidelity to the landlord does inhibit the purchase of the outstanding title as against the landlord. There is no collision of authority on this question, where the tenancy under a rightful landlord exists or continues. It is the taking of secret advantage of the landlord that the law forbids. It is the using of his possession and information as tenant, behind the back of his landlord, and to the prejudice of his landlord, which the law discountenances. In *Hodges vs. Shields*, 18 Ky., 831, the Court says: 'We suppose that no case can be found in which it has been held that the acquisition of title by a tenant for years, by a fair purchase of the land after the execution of the lease under which he took possession, was a breach of his fidelity to his landlord, or that such title enured to the benefit of the latter. The tenant in such case, can not be regarded as holding the title in trust for his landlord, especially in a case like the present, where it is shown the landlord had no title at all.' In this case the title of the appellant had expired many years before the appellee discovered it, we may reasonably suppose, or he would not have subjected himself to the payment of double rent. In self-defense, he buys the reversion, which Presstman had no superior right over him to buy. The appellant had a covenant for the renewal of his lease on

> specified terms, at any time during the term, on demand; but he had not exercised his privilege so as to continue his rights over the appellee as his tenant. If he had any equity under his lease, and was not barred by laches, as against the reversioner, to have through a Court of equity his lease renewed, Silljacks took the fee, subject to that equity."

Banks vs. Haskie (Supra, p. 57), Approved and Followed.

In this case the bill for renewal was filed a little more than three years and nine months after the expiration of the original term, and about five months after the action of ejectment. 45 Md., page 216.

The case of *Worthington vs. Lee*, 61 Md., 530, was a bill for renewal of a similar lease. The term in the original lease expired on the 1st of May, 1871, and the bill in this case was filed on the 20th of February, 1878, a little less than seven years from the termination of the leasehold estate (page 537). The court in its opinion approves and adopts the decision of the court in the case of *Banks vs. Haskie* (page 538). At page 540 the court say:

> "This case is wholly unlike that of *Myers vs. Silljacks*, where the title of the landlord was utterly repudiated and denied and every attempt to assert his right and title was resisted to the last extremity."

In the case of *Worthington vs. Lee*, there were technical difficulties in passing a decree for renewal with personal covenants inasmuch as some of the parties interested were not before the court (page 544).

In the case at bar no such difficulty exists, the defendant Camp, who is the appellant here, having appeared and demurred and appealed to the Court of Appeals of

the District of Columbia, and also to this Honorable Court.

In the case of *Baltimore vs. Canton Company*, 63 Md., 218, the court say (page 236):

> "The landlord is not affected by the rise or fall in the value of the fee; any enhancement in its value enures to the leasehold estate. The ground-rent issuing therefrom remains fixed in amount, and the lessor is really interested in the subsequent value of the land and the erection of improvements thereon, only as furnishing a sufficient pledge or security for the sum certain to be annually paid to him. The buildings that may be erected do not, as in the case of an ordinary owner of the fee, merge in it as fixtures to swell the assessment against him, but become an additional element of real and taxable value to the estate of the tenant. The landlord's interest in the land is but a form of money investment, analogous to that secured by a mortgage."

In the case of *Culbreth vs. Smith*, 69 Md., 450, the court at page 459 refer with approval to the case of *Banks vs. Haskie*.

In the case of *Connaughton vs. Bernard*, 84 Md., 577, counsel in argument say as follows (page 585):

> "Following the reasoning of this court in *Banks vs. Haskie*, 45 Md., 207, the legislature, by the act of 1886, ch. 154, Code, Art. 21, sec. 87, has made all such leases self-renewing. So that the estates thereby created are as they were intended to be, perpetual."

Chain of Title to Lot 20, Square 254.

1792, Oct. 5,

Division of square 254, lot 20, to be sold.

Rec., 110. Plat.

1792, Oct. 8,
Purchase by Blodgett of lot 20.
Rec., 114.

1794, Jan'y 17,
Trust from Blodgett to Johnson & Peter.
Rec., 25.

1801, April 13,
Lease to Dougherty.
Rec., 18.

1801, April 14,
Lease to Frethey.
Rec., 20.

1802, Oct. 9,
Bickley's judgment creditor's bill filed.
Rec., 110.

1807, April 3,
Brent, trustee to Bickley.
Dougherty's ground rent.
Rec., 39.

1807, Jan'y 15,
Brent, trustee, to Howe.
Frethey's ground rent.
Rec., 43.

1804, April 20,
Lease to Fennell.
Rec., 20.

1810, May 28,
Bickley's supplemental bill.

1818, May 8,
Davidson, trustee, to Glover.
Rec., 45.

Fennell's ground rent.

We now have:

Ground rent of Parcel A vested in Bickley.
Ground rent of Parcel B vested in Howe.
Ground rent of Parcel C vested in Glover.

PARCEL A.

Bickley to Dougherty, May 1, 1813.
Dougherty's will.
Partition proceedings; trustee to sell.
Byrne bought.
Trust by Byrne to Redin, trustee.
Redin, trustee, to Isherwood, Sept. 25, 1852.

PARCEL B.

Howe.
Sale for taxes.
Wm. Dowling bought.
Dowling to Howe, reserving Dowling's leasehold interest, May 30, 1831.
(Dowling must have had this by assignment from Thorpe's last holder of lease.)
Presumption of assignment.
Howe's executors to Dowling, July 18, 1835.
Dowling's will.
Dowling's devisees and heirs of Dowling, Jr., to Ennis, trustee, Sept. 11, 1865.
Ennis, trustee, to Isherwood, May 11, 1866.

PARCEL C.

Glover's heirs to Isherwood, Sept. 21, 1852.

WHOLE OF LOT 20 IN ISHERWOOD.

Isherwood to Willard, May 4, 1882.
Willard died August 2, 1905.
Camp's first ejectment suits, October 8, 1903.
Voluntarily dismissed by plaintiff, Feb'y 12, 1904.

Camp's second ejectment suit, Feb'y 12, 1904.
Bill filed by Willard's trustees, Jan'y 22, 1906.
Dougherty lease expired April 13, 1901.
Frethey lease expired April 13, 1901.
Fennell lease expired April 20, 1904.

Respectfully submitted,

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CAMP *v.* BOYD.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 71. Argued February 28, March 3, 5, 1913.—Decided June 9, 1913.

Parties in possession of land under titles from various sources and having the equitable, as well as the legal, title to a portion of it and the equitable, but not the legal, title to the remainder, may, under the circumstances of this case, properly invoke the aid of equity to restrain other parties from maintaining ejectment suits and to adjudicate the title to the entire tract in a single suit.

A court of equity ought to do justice completely and not by halves.

As a court of equity should prevent multiplicity of suits, it may, to this end, if obliged to take cognizance of a suit for any purpose retain it for all purposes even though required to determine purely legal rights otherwise beyond its authority.

While a term, such as "ground rents," used in a conveyance may not be the recognized equivalent of any legal estate in lands, the court may ascertain the recognized meaning given to it and resort to that as evidence of the intent of the parties using it and thus determine what effect ought in equity to be given to it.

The term "ground rents" as used in the deeds and proceedings involved in this case did not import merely the rents that were to accrue during the residue of a 99 year lease renewable forever, but included the reversion as well, it appearing that the entire beneficial interest of the owner of the ground rents and the reversion was undoubtedly the subject of the sale and within the contemplation of the buyer and seller.

Deeds made by a public officer in pursuance of a decree of the court which are defective in form by reason of a mistake made by such public officer will pass the title to the property intended to be conveyed, as harmful consequences should not fall upon purchasers, who, in reliance upon apparent regularity have paid their money for the property.

Equity regards that as done which ought to be done. It looks to the true intent and meaning, rather than to the form. It relieves of consequences of accident and mistake as well as fraud.

35 App. D. C. 159, affirmed.

THE facts, which involve the title, legal and equitable, to certain real estate in the City of Washington, District of Columbia, are stated in the opinion.

Mr. Hugh T. Taggart, with whom *Mr. Wm. E. Ambrose* was on the brief, for appellant.

Mr. R. Ross Perry, with whom *Mr. Wm. F. Mattingly*, *Mr. John B. Larner* and *Mr. R. Ross Perry, Jr.*, were on the brief, for appellees.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is an appeal from a decree of the Court of Appeals of the District of Columbia, affirming a decree of the Supreme Court, establishing the title of the complainants, (now appellees) to a lot of land in the City of Washington, and granting a perpetual injunction against the further prosecution of an action of ejectment that was brought by the appellant, Joseph Parker Camp, against Caleb C. Willard, the devisor of the complainants, to recover possession; and also enjoining Camp and all persons claiming under him from instituting any further proceedings at law or in equity for the possession of, or for asserting any claim to, the land. The cause was heard in the Supreme Court upon a demurrer to the bill of complaint, which was overruled (37 Wash. Law Rep. 14); and the defendant having elected to stand upon his demurrer, a final decree followed as of course. The decision of the Court of Appeals is reported 38 Wash. Law Rep. 374; 35 App. D. C. 159.

Both parties claim under Samuel Blodget, Jr., who owned the property in the early days of the Federal Capital. The bill of complaint sets forth the full history of the title, with copies of the instruments of conveyance and other documents necessary to a complete under-

standing of the controversy. All the facts hereinafter stated respecting the title are derived from the averments of the bill and from the documents filed with it and by reference made parts of it.

The property in question is described as—"Original lot numbered Twenty, in Square numbered two hundred and fifty four, in the City of Washington, in the District of Columbia, as the same is laid down on the ground plan or map of said city." This square is bounded by E and F Streets, and by 13th and 14th Streets, in the Northwest section; Lot No. 20 being on the southerly side of F Street.

Under the act of Congress entitled—"An act for establishing the temporary and permanent seat of the Government of the United States," passed July 16, 1790 (1 Stat. 130, c. 28), three Commissioners were appointed by President Washington, and they in the following year made a friendly agreement with the original land-holders, which resulted in laying out the city in squares and streets, and the subdivision of the squares; and, in the year 1792, a partition of the lands was made between the original proprietors and the Commissioners. In that division this lot was amongst those set off to the Commissioners, and it, with some adjoining lots, was sold by them to Blodget in the same year. But no conveyance was made to him, and he therefore acquired only an equitable interest.

Blodget about that time organized a lottery under the sanction of the Commissioners, and advertised it as done "By the Commissioners appointed to prepare the public buildings, &c., within the City of Washington for the reception of Congress, and for the permanent residence after the year 1800." It was announced as "A lottery for the improvement of the Federal City." It was stated that the sole design of the lottery was to facilitate other improvements together with the public buildings. The capital prize announced was—"One superb hotel, with

baths, outhouses, etc., etc., to cost fifty thousand dollars," with cash prizes aggregating $300,000 in addition. The advertisement stated that "The keys of the hotel, when complete, will be delivered to the fortunate possessor of the ticket drawn against its number," and that "One hundred dollars will be given for the best plan of an elegant and convenient hotel or inn, with hot and cold baths, stable," etc. The advertisement was subscribed "S. Blodget, Agent for the Affairs of the City." Large sales of tickets having been made by Blodget, and by Colonel William Deakins, Jr., who appears to have been his partner in the scheme, and some time having elapsed without a drawing being made, the Commissioners became uneasy because of their real or supposed responsibility for the prizes, whereupon Blodget and Deakins gave them a written declaration under seal, dated September 20, 1793, agreeing to indemnify the Commissioners from all claims and demands by reason of any prize to be drawn. Afterwards, and at the request of the Commissioners, Blodget, who appears to have been a large land owner in the District, made a mortgage or deed of trust, under date of January 28, 1794, to Thomas Johnson, Jr., and Thomas Peter, as Trustees, for securing the payment of the prizes and for the indemnity of Thomas Johnson, David Steuart, and Daniel Carroll, the Commissioners, their successors, etc. By the mortgage, Blodget transferred in fee to Thomas Johnson, Jr., and Thomas Peter—"all the lands and real estate and property of him the said Samuel Blodget situate and being within the Territory of Columbia, with their . . . appurtenances, and all the estate, right, title, etc., in law and in equity" of Blodget therein. The defeasance clause provided that Blodget should "pay all prizes and sums of money with which he is or may be chargeable, or for which he may be liable for or on account of the said lottery, and shall in all things save, indemnify and keep harmless the said Thomas Johnson, David

Steuart and Daniel Carroll, their successors, etc., against all suits," etc.

Thereafter, and in the year 1801, Blodget made three leases of as many several parcels of Lot 20. The lot has a frontage of 51 feet 11 inches upon the southerly side of F Street, and a depth of 159 feet running to an alley. One lease was dated April 13, 1801, and demised to James Daugherty the easterly portion of the whole lot, having a frontage of 20 feet upon the street, and running the full depth to the alley; the second lease was to Edward Frethy, dated April 14, 1801, and covered the westerly portion of the lot, having a frontage of 19 feet 11½ inches and running of that width to the alley; the third lease, covering the intervening portion of the whole lot, having a frontage of 11 feet 11 inches on the street, and running the full depth, was dated April 15, 1801, and made to Edward Fennell. The Daugherty and Frethy leases were recorded within the year. The Fennell lease, for some reason, was not promptly acknowledged or recorded, and therefore a new lease was made by Blodget to Fennell, dated April 20, 1804, and recorded a few days later. These leases all ran for ninety-nine years from their respective dates in 1801, the terms, however, "to be renewable forever." They were sealed instruments, elaborate in form, signed and acknowledged by lessor and lessee in each instance, and recorded in the Land Records of the District of Columbia. A copy of the Daugherty lease is set forth in the margin.[1]

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[1] [Copy of Lease—Samuel Blodget to James Daugherty.]

This indenture made the thirteenth day of April in the year of our Lord one thousand eight hundred and one Between Samuel Blodget of Philadelphia State of Pennsylvania of the one part and James Daugherty of the City of Washington in the Territory of Columbia of the other part witnesseth that the said Samuel Blodget for and in consideration of the payment of the rent and performance of the Covenants hereinafter mentioned on the part of the said James Daugherty his executors administrators and assigns to be paid and performed Hath

The Frethy lease was substantially like it. The Fennell lease of April 20, 1804, contained a recital of the previous lease to him and the failure to record it, and the making

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demised granted leased and to farm letⁱ and by these presents Doth demise grant lease and to farm letⁱ unto the said James Daugherty his executors administrators and assigns. All that Lotⁱ of twenty feet front on F Street in Lotⁱ number twenty in square number two hundred and fifty four in the City of Washington aforesaid Together with all improvements, alleys, ways water & water courses privileges, easements and emoluments belonging or appertaining to said Lott. To have and to hold said lotⁱ of ground with the appurtenances unto the said James Daugherty his executors administrators and assigns from this the thirteenth day of April above mentioned for and during and unto the full term of Ninety nine years from thence next ensuing and fully to be compleated and ended yielding and paying therefor yearly and every year during said term unto the said Samuel Blodget his heirs and assigns the yearly rent or sum—forty dollars current money of the United States free and clear of all taxes assessments or public dues nor or hereafter to be laid taxe- or assessed on sd. demised premises in annual payments on the said thirteenth day of April in each and every year—the said term of ninety nine years to be renewable forever. Provided always and it is the true intent and meaning of these presents that if it shall happen that if the said yearly rent shall be in arrear and unpaid by the space of forty days next after the time on which the same is above reserved to be paid, then it shall and may be lawful to and for the said Samuel Blodget his heirs or assigns unto the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess occupy and enjoy as in his or their former estate until all such arrearages of rent with legal interest thereof and all and every cost charge and expenses incurred by the said Samuel Blodget his heirs or assigns by reason of the non-payment of said rent shall be fully satisfied and paid or make distress therefor at his or their option and also if the said yearly rent Shall be in arrear and unpaid by the space of sixty days next after the time on which the same is above reserved to be paid then it may be lawful to and for the said Samuel Blodget his heirs and assigns unto the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess occupy and enjoy as in his or their former estate and that then in such case this Indenture and every clause matter and thing therein contained shall from henceforth be utterly void and of no effect and the said James Daugherty for himself his executors adminis-

of the present instrument in the place of it; the demise then proceeded in substantially the same form as in the other leases.

The Daugherty lease reserved a yearly rent of $40

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trators and assigns doth covenant and agree to and with the said Samuel Blodget his heirs and assigns well and truly to pay the above reserved yearly rent or sum of forty dollars at the time before within mentioned and also that he the said James Daugherty his executors administrators and assigns shall and will erect and build a good and substantial dwelling house to be compleated and tenantable in the course of the present year at farthest which if not complied with he the said James Daugherty binds himself his heirs executors and administrators to satisfy and pay unto the said Samuel Blodget his heirs and assigns the damages which shall or may accrue to him or them for such compliance and moreover in case *of* a defalcation shall be made in payment of the rent as above mentioned then and in such case the improvements which shall be made on the above demised premises shall belong unto the said Samuel Blodget his heirs and assigns—and the said Samuel Blodget for himself his heirs and assigns doth covenant promise and agree to and with the said James Daugherty his heirs executors administrators and assigns that he the said James Daugherty his heirs or assigns at any time or times during the continuances of this present or future demise on the request and at the proper costs and charges of the said James Daugherty his heirs, or assigns and on his or their payment or tending in payment to the said Samuel Blodget his heirs or assigns the principal sum of five hundred dollars shall and will make and execute a deed in fee simple for said Lot*t* and premises above demised to the said James Daugherty his heirs and assigns forever with such clause of General Warrant*ee* as he or they may require. It is further agreed that the said James Daugherty his heirs or assigns may pay unto the said Samuel Blodget his heirs or assigns any proportion of the principal of five hundred dollars not less than one tenth of that sum and so much of the principal as shall be paid so much in proportion of the rent shall be lessened reserving unto the said Blodget his heirs or assigns all penalties and forf-itures within before mentioned until the whole sum of five hundred dollars, is paid when the whole rent shall cease. In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

SAM BLODGET. [SEAL.]
JAMES DAUGHERTY. [SEAL.]

Signed, sealed and delivered, etc.

payable annually, with an option of purchase in fee at the price of $500; the Frethy lease was the same in these respects; the Fennell lease called for a rent of $24 per annum and a purchase price of $300. The leases were alike in that they provided for terms of 99 years each, with a right of perpetual renewals; with right of reëntry by the lessor for 40 days' default in payment of the rent, or distress at his option; two of them provided that for 60 days' default in the payment of the rent the lessor might reënter and terminate the lease; each lease contained an option for a purchase in fee at a price of which the annual rent was equivalent to 8%; each required the lessee to erect a dwelling house upon the premises during the year of the making of the lease. The Fennell lease differed in containing no provision for forfeiture of the term on nonpayment of the rent, and in some minor particulars.

In October, 1802, one Robert S. Bickley began suit against Samuel Blodget and others by bill in Chancery in the Circuit Court for the District of Columbia, setting up the history of the above-mentioned lottery; the public advertisement of the scheme; that Bickley, in reliance upon the proposed plan, purchased a ticket; and that the sale and disposal of the tickets was intrusted wholly to Blodget and to William Deakins, Jr., since deceased. The bill set out the making of the indemnity agreement of September 20, 1793, by Blodget and Deakins, and the making of the mortgage by Blodget on January 28, 1794, to Thomas Johnson, Jr. (since deceased), and Thomas Peter (still surviving), covering all the lands of Blodget within the Territory of Columbia. That he, Bickley, drew as a prize the "Superb Hotel with baths, outhouses, &c., &c., to cost fifty thousand dollars," as offered and promised in the advertisement, plan and scheme; "that the said hotel has never been finished and the keys thereof delivered to your orator as by the said scheme and plan of the lottery he was assured and promised it should be."

That in the year 1798 he, Bickley, instituted a suit at law in the Supreme Court of the Commonwealth of Pennsylvania, against Blodget, to recover damages by reason of his breach of undertaking; that this suit being at issue, and a jury impanelled to try the issue joined therein, it was mutually agreed between Bickley and Blodget, with the leave of the court, that the jury should be discharged from giving their verdict, and should be empowered to act as referees, to determine and order what sum of money, if any, should be paid by Blodget to Bickley, and if they thought proper, to order titles and conveyances and other acts by either party to the other as justice should require; whereupon the jury as referees awarded that Blodget should convey to Bickley, in fee simple, the hotel and the lots of ground belonging to it, and should also pay to Bickley the sum of $21,500 with costs, for the payment of which, and the performance of the award, the property in the City of Washington mortgaged by Blodget to the Commissioners was by the terms of the award to be first resorted to; that upon the report of the jury as referees the court gave judgment in favor of Bickley against Blodget, for said sum of $21,500 and costs, and that the report of the jury as referees should be in all its other parts confirmed and carried into full and complete execution. That by virtue of the deed of trust of January 28, 1794, all the real property which Blodget had within the limits of the Territory of Columbia was pledged and made answerable to make good to the fortunate adventurers the prizes they should draw in the lottery, and "that your orator has his claim to be paid out of that property still further confirmed by the award and the judgment hereinbefore set forth." The bill then set forth that the "lands and real estate and property" of Blodget situate within the Territory of Columbia "as well in law as in equity, as by the said deed is expressed, consisted of," etc., following with a detailed enumeration of many tracts and parcels

of land, among which is—"the following property which the said Blodget purchased of the said Commissioners at the times hereinafter mentioned, which being fully paid for by the said Blodget, certificates in due form have regularly issued therefor, but the Commissioners meaning to hold the same as security to themselves and to the fortunate adventurers in the said lottery, have not delivered the same to the said Blodget or caused them to be recorded, but whilst they remained in office held the same, and when they went out of office the same fell into the hands of Thomas Munroe, Superintendent of City Affairs, who now holds them, that is to say, Lots numbered twenty and twenty-one in square 254 in the said City, sold to the said Blodget on the 8th day of October, 1792," etc., etc. The bill specified by lot and square numbers those lots that had been appropriated by Blodget for the hotel, averring that the legal title to some of them was in Munroe, Superintendent for City Affairs, certain of them having been conveyed by Blodget to the Commissioners, others having remained in their ownership, and the legal title to the remainder being in Blodget. Sundry deeds of conveyance made by Blodget to various purchasers for portions of the lands covered by the deed of trust were then set forth. In this connection the leases made by Blodget to Daugherty and Frethy, respectively, in April, 1801, for parcels of lot No. 20 in Square 254, were set out, and these lessees were made parties defendant. The Fennell lease was not mentioned, apparently because it was not upon record at the time of the filing of the bill. The prayer was, that Blodget might be required to convey to Bickley the hotel with the lots pertaining thereto; that Munroe as Superintendent of the City should be compelled to convey to Bickley that portion of the lots pertaining to the hotel of which he held the certificates; and that the residue of the property set forth in the bill of complaint, or so much thereof as necessary, should be sold

to pay the money adjudged to Bickley by the award and judgment in the Pennsylvania suit.

Annexed to this bill of complaint as exhibits were copies of the deed of trust of January 28, 1794, a transcript of the proceedings in the Pennsylvania suit, and other documents sustaining and supplementing the averments of the bill. Among the parties named as defendants were Blodget, Thomas Munroe, Superintendent for City Affairs, Frethy, Daugherty, and other grantees of Blodget. Frethy was served with process and filed an answer setting up that he had assigned his lease to one Betz. Daugherty being a non-resident, notice appears to have been published against him. Blodget answered, admitting in part and denying in part the averments of the bill. Annexed to the answer was a formal admission of "the execution of the various exhibits at this time filed by complainant, and that they may be read in evidence." Thomas Munroe, as Superintendent of the City of Washington, filed an answer admitting the principal averments of the bill and setting up that he, as Superintendent, had in his hands the certificates of sale evidencing Blodget's purchases of various lots from the former Commissioners; that the Commissioners had withheld the certificates from Blodget's possession "as security for the fortunate adventurers in the said lottery who should have claims against the said Blodget." Lot 20 in Square 254 does not appear among the lots enumerated in this connection. Thomas Peter, the surviving trustee under the mortgage or deed of trust of January 28, 1794, does not appear among the parties named as defendants in the original bill filed by Bickley, but he filed an answer admitting the execution of that deed, and that it was made at the instance of the then Commissioners of the City of Washington to secure the punctual payment of the prizes drawn in the lottery therein mentioned; and—"That this defendant knows not what property is included or compre-

hended by the said deed, but this defendant further answering admits that whatever property he does hold in virtue of the said deed is held by him in trust for the purposes in the said deed mentioned and subject to any order or decree which this Honorable Court shall make respecting the same." Thereafter, Peter seems to have been treated as a party defendant. On September 24, 1804, a written stipulation was filed in the cause, signed by the respective solicitors for complainant and for the defendant Blodget, in the following terms: "It is agreed by the complainants and the defendants in this cause, by their solicitors, that a decree shall pass immediately by consent for conveying to the complainant the hotel and the lots appropriated for the same. That the execution and truth of all the exhibits referred to in and by the complainants is hereby admitted, all form as to the *of* (*sic*) proceeding waived. This admission in no wise to give validity or authenticity to the award obtained in the court of Pennsylvania or the judgment thereon rendered, but that is to stand on its own merits unaffected by this agreement. This cause set down by consent for hearing at the next term." An interlocutory decree was made accordingly, under date October 1, 1804, requiring Blodget and Thomas Peter to convey to Bickley, Lot 1 in Square 430, with the buildings and improvements thereon, and requiring Munroe, as Superintendent, to convey and assure to Bickley Lots 1, 2, 3, 4, and 5 in that square; and retaining the cause as to all other property and as to all other objects and purposes mentioned in the bill. October 4, 1805, a further decree was made, requiring the defendant Blodget to pay to the complainant, Bickley, on or before a date in November, the amount of the debt due to him, being the sum of $26,635.13, besides costs, and decreeing that on failure thereof certain designated sections and lots of ground, situate in the City of Washington, or so much thereof as should be sufficient

to raise and pay the said several sums of money, should be sold, and it was further decreed "that certain ground rents reserved by the said defendant Blodget, by indenture made between the said Blodget, of the one part, and Edward Frithey, one of the defendants, of the other part, bearing date on the 4th day of April 1801, and certain other ground rents reserved by the said Samuel Blodget by indenture made between the said Samuel Blodget of the one part, and James Daugherty, one of the said defendants, of the other part, bearing date on the 13th day of April, 1801, be also sold for the purposes aforesaid." Daniel Carroll Brent was appointed trustee for making the sale. He was directed to sell the property at public auction, after advertisement, report the sale to the court, and upon confirmation of it, and payment of the purchase money, "the said trustee by a deed or deeds good and operative in law, etc., shall give, grant, bargain and sell, release and confirm to the respective purchasers and their heirs respectively all the right, title and interest therein which was or is in the said Samuel Blodget, and all the right, title or interest therein which the said Thomas Peter derived in and thereto by virtue of the deed in the said bill of complaint mentioned (referring to the deed of trust of January 28, 1794) . . . and the purchaser or purchasers respectively, and their respective heirs, shall thereupon hold the same by them respectively purchased free, clear and discharged from all claims of the said Samuel Blodget and of the other defendants." It was further decreed that the defendant Thomas Peter, upon the request of the trustee, should join and become a party in and to all deeds to be executed by the trustee in virtue of this decree; and that in all cases where the outstanding legal title remained in Thomas Munroe as Superintendent, he, Munroe, should at the request of the trustee, join in and become a party to the deed. "And lastly, as to all the property in the said bill of complaint mentioned,

and as to all the objects of the said bill not in and by this decree specially and particularly decreed upon, this cause is retained for further proceedings hereafter to be had thereupon, and for that purpose is ordered to be continued."

Brent accepted the appointment as trustee, gave bond, and, after advertisement, made a public sale of the property. The notices, after describing many tracts of land by lot and square numbers, contained the following: "Also several certain ground rents reserved by said Blodget, amounting in the whole to eighty dollars per annum." His report of sale was made under date of January 21, 1806. It mentions "Ground Rent on James Daugherty's lease" as sold to Henry Pratt for $360, and "Ground Rent on Edward Frithy's lease" as sold to Robert F. Howe for $400. No mention is made of the remainder of Lot 20 in Square 254, nor of the ground rent on the Fennell lease. By decree made under date June 25, 1806, the report was approved and the sales confirmed (with an exception not now material), and it was ordered that the proceeds of sale, after paying expenses, taxes, etc., be paid over to complainant towards the discharge of the moneys theretofore decreed to be due from the defendant Blodget to him. It further appears that the purchases made by Pratt (including the Daugherty ground rent) were made for the benefit of Bickley, the complainant; and Pratt assigned his bids to Bickley, October 31, 1806. Brent reported this to the court and asked for leave to make deeds for the Pratt purchases to Bickley, and the court accordingly made an order that Brent, together with Thomas Peter and Thomas Munroe, should convey to Bickley all the property purchased by Pratt at the sale.

Pursuant to these proceedings, Brent, Trustee, Thomas Peter, and Thomas Munroe, Superintendent, etc., joined in a deed dated April 3, 1807, to Bickley, reciting the decree of October 4, 1805, ordering among other things

"that sundry squares, lots and portions of ground and ground rents in the said City of Washington" be sold, reciting the advertisement and sale made in pursuance thereof, and that at the sale certain lots particularly mentioned "And the ground rent reserved by the said Samuel Blodget by Indenture made between him and James Daugherty, one of the defendants, bearing date on the 13th day of April, 1801," were sold to Pratt; the assignment of Pratt's bid to Bickley, etc. Brent as trustee thereby conveyed "all the right, title and interest of, in, and to the before mentioned squares, lots and portions of ground and ground rents in the City of Washington aforesaid which was in the said Samuel Blodget. Peter conveyed all his right, title and interest under the mortgage or deed of trust of January 28, 1794; and Munroe joined in conveying certain of the lands described in the deed, but not the "ground rents" in question.

By indenture dated January 15, 1807, Daniel C. Brent, Trustee, and Thomas Peter conveyed to Robert F. Howe the property purchased by the latter at the trustee's sale. The deed recites the decree, and the sale made thereunder, and that "among other property and ground rent so set up and exposed to sale was the ground rent reserved by the said Blodget by Indenture made between him and the said Edward Frethy, one of the defendants, bearing date on the fourth day of April, 1801, when the said Robert F. Howe being the highest bidder therefor became the purchaser thereof at and for the sum of four hundred dollars," and in consideration thereof, conveyance is made to Howe of "all the right, title and interest of, in and to, the said ground rent, reserved by the said Samuel Blodget by Indenture made between him and the said Edward Frethy, dated on the fourth day of April, 1801, as aforesaid, which was in the said Samuel Blodget, previous to and at the time of making the said decree, and all the right, title and interest therein which

the said Thomas Peter derived in and thereto, by virtue of the deed referred to in the said decree to have been given by the said Samuel Blodget to the said Thomas Peter and Thomas Johnson, Jr., since deceased, bearing date on the twenty-eighth day of January, 1794," etc.

On May 28, 1810, a supplemental bill was filed, reciting that the sale made by Brent had fallen short of paying the money decreed to be due to Bickley, and that he had lately discovered other property not included in the former bill and decree, consisting of sundry lots particularly described, and—"That the said Samuel Blodget was also on the said 28th day of January, in the year 1794, seised and possessed of and entitled to sundry lots in the said City, which he afterwards let on ground rent, reserving an annual rent for the said property, to divers persons hereinafter particularly set forth, which tenants your petitioner does not wish to disturb or interfere with, but wishes to leave them in the quiet enjoyment of their leases under the said Blodget, under the terms and conditions expressed in the said leases respectively, but wishes and prays of this court to direct the ground rents reserved thereon, and the reversionary interests of the said Blodget therein, whatsoever the same may be, to be sold for the benefit of your petitioner, which lots so leased on ground rent are as follows, to wit, eleven feet, eleven inches more or less fronting on F Street, North, extending in depth one hundred and fifty-nine feet to an alley, being part of Lot No. 20 in Square No. 254, leased to a certain Edward Fennell, his Executor &c., for a term of years renewable from time to time forever, reserving the quarterly rent of twenty four dollars payable to the said Blodget." Several other like leases are mentioned, and this averment follows—"To all of which ground rents the said Blodget now claims title, and is in the actual receipt thereof." The prayer was for a sale of the property thus mentioned, to raise the balance due to complainant.

Blodget answered, admitting the facts stated in the supplemental bill, with an exception not now material, and stating that he had no objection to a decree as prayed. A decree was made accordingly, under date November 5, 1813, and Washington Boyd was appointed trustee to make the sale. Some years later he made a report of sale in writing, and afterwards represented to the court that in consequence of ill health he would be required to leave the District for some time, and requested the court to appoint some other person to make conveyances, suggesting John Davidson for this purpose. The court appointed Davidson accordingly.

By indenture dated May 8, 1818, Davidson, as such Trustee, conveyed to Charles Glover, in consideration of $405.50, "all the interest claim and right of the said Samuel Blodget" in certain lots sold by Boyd as Trustee, pursuant to the decree of November 5, 1813, and, among others, "part of Lot twenty, in square two hundred and fifty four, fronting eleven feet eleven inches on north F Street, leased to Edward Tennell (*sic*) for ninety nine years, renewable forever, under the annual ground rent of twenty four dollars."

This completes the recital of the proceedings in the Chancery suit of Robert S. Bickley against Samuel Blodget and others, and of the sales and conveyances made pursuant to the decrees therein, so far as they pertain to the interest of Blodget in the land now in controversy. We proceed to a statement of the subsequent transfers, so far as necessary for a determination of the questions presented.

By indenture dated May 1, 1813, Bickley, in consideration of $400, conveyed to James Daugherty, his heirs and assigns, "all that part of Lot No. 20 in Square No. 254, fronting on F Street North, twenty feet" which was leased by Blodget to Daugherty. The deed mentions the date of the lease, and recites that "all the estate, interest and claim of the said Samuel Blodget in and to the said part

of a lot and premises, was afterwards sold and conveyed by Daniel C. Brent as trustee, under a decree of the said Circuit Court of the District of Columbia for the County of Washington to the said Robert S. Bickley." This deed contained a covenant of general warranty.

Assuming the above-mentioned deed from Brent, Trustee, and others to Bickley had the effect to vest in Bickley all the reversion that was in Blodget, subject to the Daugherty lease, this deed from Bickley to Daugherty brought about a merger of the leasehold and the reversion.

By mesne conveyances, all of Daugherty's interest came to be vested in one Benjamin F. Isherwood in the year 1852.

As already pointed out, the ground rents under the Frethy lease were conveyed by Brent, Trustee, and Thomas Peter, by deed dated January 15, 1807, to Robert F. Howe. It appears that Frethy had assigned his lease to one Frederick Betz, by recorded deed, dated September 19, 1801; Frederick Betz assigned it to George Betz by recorded deed of January 24, 1803; and George Betz assigned it to John Thorp by recorded deed of February 15, 1804. Each of these instruments transferred all right and interest of the assignor in the land, describing it by measurements and abuttals, and referring to the lease thereof made by Blodget to Frethy for "ninety-nine years, renewable forever."

It is admitted that William Dowling probably succeeded to the ownership of this leasehold by an unrecorded assignment of Thorp's interest. Dowling claimed in a deed made by him to Robert F. Howe, presently to be mentioned, that he was the owner of the leasehold interest.

In 1830 the corporation of the City of Washington made a tax deed to Dowling for "Part of Lot 20 and the improvements in Square 254" for unpaid taxes assessed against it "as the property and in the name of Robert F. Howe," for the years 1819 to 1824, inclusive. Dowling

by a deed made in 1831, reciting this tax title, conveyed to Howe and his heirs "all the right, title, interest, and estate of him, the said William Dowling," in the part of the lot conveyed to him by the tax deed, "except the leasehold right belonging to him in the same," the deed declaring it to be the intention of the parties "that the said William is not to surrender his leasehold interest in the said part of lot and premises." Robert F. Howe, by his will, dated in 1830, authorized his executors to sell all his estate for the purpose of paying certain legacies, and thereafter his executors, by deed dated in 1835, conveyed this plot to William Dowling, the deed reciting that Robert F. Howe "held under a deed of conveyance to him from Daniel C. Brent, Trustee, and Thomas Peter, made the fifteenth day of January, in the year of our Lord 1807," and that at the time of the making of that deed the property "was subject to a lease for ninety-nine years, renewable forever," as will appear "by reference to an indenture of lease dated April fourth, 1801, and recorded," etc.

Under the will of William Dowling, and by mesne conveyances thereafter, whatever estate Dowling had in this parcel became vested in Benjamin F. Isherwood in the year 1865.

As already pointed out, the ground rents of the Fennell lease—for the word *Tennell* in the deed is obviously a mistake—became vested in Charles Glover; but that deed likewise included "all the interest, claim and right" of Blodget in that part of Lot 20 that was covered by the Fennell lease; thus evidently conveying the reversion. The bill avers that this part of Lot 20 was conveyed by Abraham Bradley's heirs to Benjamin F. Isherwood in 1852. It does not appear when or how (if at all) Fennell's leasehold became merged in the reversion. Nor does it seem to be material, for if not merged, it lapsed on the expiration of the 99-year term and failure to renew, and this

before the ejectment suit was commenced. Respecting this parcel, the contention of appellant is, that the bill of complaint of the appellees shows no reason for equitable relief, because, if they have the title they claim to have, it is a sufficient title to constitute a good defense to an action at law.

Whatever interests Benjamin F. Isherwood may have acquired by the above-mentioned conveyances in the several portions of Lot 20 admittedly became vested in Caleb C. Willard, the devisor of the appellees, in or about the year 1882.

On the other hand, whatever reversionary rights (if any) remained in Samuel Blodget have admittedly become vested in the appellant.

The bill of complaint herein avers that the defendant, now appellant, claims to be the assignee of the heirs-at-law of Blodget; and that he claims that after the execution of the leases there remained in Blodget and his heirs a reversion in fee in Lot 20; that only a rent-charge passed under the proceedings in *Bickley* v. *Blodget;* that as the leases have expired without purchase or renewal by the lessees the reversion has come into possession, and that therefore as plaintiff in ejectment he has the right to recover possession and title in fee simple.

These contentions are in fact made here in behalf of the appellant with respect to so much of Lot 20 as was leased to Daugherty and to Frethy respectively.

As to the Fennell lot, it is insisted that by the very language of the supplemental bill in the Bickley suit, and the decree for sale made pursuant to it, and the terms of the deed made by Davidson, Trustee, thereunder, the purchaser acquired a legal title to the reversion, and not merely to the ground-rents; and that therefore, on the theory that the averments of the bill are true, the appellees have an absolute fee simple title to the Fennell lot, such as to constitute a plain, adequate and complete defense

to the ejectment suit. And it is pointed out that under the local practice (Code D. C., §§ 993, 1000) defendants may separately defend as to that parcel.

The question for decision, therefore, is whether the appellees have a good title as against the appellant; and, if so, whether the nature of their title is such as to render it unavailable at law and to require the intervention of a court of equity for their relief against appellant's claims.

It is suggested, rather than urged, as a ground of equitable jurisdiction, that because Blodget never received a deed of conveyance from the Commissioners for Lot 20 in Square 254, his title was never more than an equitable title; and that since both parties claim under him, the controversy is a matter proper for the cognizance of a court of equity, whatever be the grounds of controversy as between the parties. We doubt whether this view is tenable. There is no question that Blodget, and those claiming under him, have openly asserted title to the property, at least from the year 1801 down to the present time; and while the bill herein contains no averments respecting possession, it may be assumed that, for a long time at least, possession has followed the title. Assuming Blodget and those inheriting from him, and under whom appellant claims, were equitably entitled to the reversion, subject only to the ninety-nine year terms, any possession of the lessees has been, as against the outside world, the possession of the appellant and his predecessors in title. Therefore it is more than probable that any legal title remaining in the Commissioners has become barred by long possession. Besides, it might perhaps, after 120 years, be presumed at law, as well as in equity, that the Commissioners had made a deed or deeds to Blodget that had since been lost. And, since both parties to the present controversy claim under Blodget, and would probably in an action of ejectment be required to trace title no further back than the common source, it is better, we think, to lay aside for

present purposes the theory that the equitable jurisdiction in this action can be supported upon the ground that Blodget derived only an equitable title from the Commissioners.

This brings us to the real controversy, which is the effect of the proceedings and decree in the Bickley suit, and the deeds made thereunder by Brent, Trustee, to the purchasers of the "ground-rents."

For present purposes, we may accede to the contention of appellant that the bill of complaint herein shows, with respect to the parcel that was covered by the Fennell lease, the title to which passed under the supplemental bill and decree in the Bickley suit, that the effect of the proceedings, and the language of the decree, and of the deed made by Davidson, Trustee, thereunder, was such as to pass to the purchaser a legal title to the reversion.

Assuming this, however, it does not follow that the appellees, if they have the *equitable as well as the legal title to the Fennell parcel*, and if at the same time they have the *equitable but not the legal title to the Daugherty and Frethy parcels*, may not properly invoke the aid of equity against the ejectment suit. If the appellant had limited his action at law to the Fennell parcel, his contention that if the Willard title to that parcel is good at all, it is as good at law as in equity, and therefore available as a defense in the ejectment suit, would demand consideration.

But appellant brought the action of ejectment for an entire lot made up of three parcels, of which the Fennell plot lies between the other two. The appellees, if driven to invoke the aid of equity against that action because they had an equitable and not a legal title to the Daugherty and Frethy parcels, were fairly entitled to bring the entire controversy into the court of equity, so that it might be adjudicated in a single suit.

A court of equity ought to do justice completely, and not by halves. *Decker* v. *Caskey*, 1 N. J. Eq. 427, 433;

Williams v. *Winans*, 22 N. J. Eq. 573, 577; *Knight* v. *Knight*, 2 Eq. Cas. Abr. 169, pl. 25; *S. C.*, 24 Eng. Rep. 1088, 1089; Story Eq. Pl., §§ 72, 174.

One of the duties of such a court is to prevent a multiplicity of suits, and to this end a court of equity, if obliged to take cognizance of a cause for any purpose, will ordinarily retain it for all purposes, even though this requires it to determine purely legal rights that otherwise would not be within the range of its authority. *Oelrichs* v. *Spain*, 15 Wall. 211, 228; *Holland* v. *Challen*, 110 U. S. 15; *Reynes* v. *Dumont*, 130 U. S. 354, 395; *Kilbourn* v. *Sunderland*, 130 U. S. 505, 514; *Gormley* v. *Clark*, 134 U. S. 338, 349. And since there is no question that the equitable title of appellees to the Fennell lot is good, if their equitable title to the Daugherty and Frethy lots is good, we may proceed at once to the question of the effect of the proceedings and decree in the Bickley suit, and the deeds made thereunder, as bearing upon these two lots.

In strictness of law, the deeds made by Brent, Trustee, purporting to convey the "ground rents" on the Daugherty and Frethy leases cannot be deemed to have included the reversion. The rule at law is, that by a grant of the reversion the rent reserved will pass; but that by a grant of the rent the reversion will not pass. "The incident, accessary, appendant, and regardant, shall in most cases pass by the grant of the principal, without the words *cum pertinentiis*, but not *é converso;* for the principal doth not pass by the grant of the incident, &c. *Accessorium non ducit, sed sequitur, suum principale.*" Shepp. Touch. 89. And see Co. Litt. 152a; Broom. Leg. Max. (7th ed.), 491, 493.

The contention of appellant is that the term "ground rents," as employed in the decree of the court in the case of *Bickley* v. *Blodget*, has a plain and clear meaning, ascertainable without recourse to outside evidence; and it is insisted that the rents referred to were limited to the

terms of ninety-nine years, because the only rents mentioned in the leases are the annual rents reserved by Blodget in each demise, to be paid during the respective terms of ninety-nine years, and which therefore would cease with the expiration of the term.

The argument elaborates the legal status of the lessor and lessee under the leases. It is said that the import of the contract is plain; that a lease for a specific and definite term of ninety-nine years, and no longer, was created; and that an option was given in connection therewith to the respective lessees and their successors in interest for other and further terms of similar duration, and also an option for the purchase of the demised premises during the terms created or any future term. And it is insisted that the leases extended only until the expiration of their respective terms, and did not, *proprio vigore*, extend or continue such terms for a definite or indefinite period; that the options made the existence of new leases in the future possible, but not certain; that the creation of future leases depended wholly on the exercise of the privilege of a renewal by each lessee or his successor in interest; and that the privilege not having been exercised in either instance, all rights of the lessees expired at the end of ninety-nine years.

All this may be assumed, as matter of law, without advancing us far towards the solution of the real question presented. If the appellant is entitled to the reversion, the question whether the appellees or their predecessors in title have lost the right of renewal or purchase by failure to exercise the option, and whether equity will relieve them by decreeing a renewal on proper terms, may require consideration.

But the question must first be answered whether, in the sight of equity, the appellant is entitled to the reversion. The appellees, besides showing a title to the leasehold interests of Daugherty and Frethy, respectively claim

to have acquired also the reversion in fee that remained in Blodget; and this they claim under the decree in the Bickley suit, and the deeds made thereunder, in which the interest was denominated "ground rents." Now, while we cannot say that this term is the recognized equivalent of any legal estate in lands, it is clear that as a descriptive term it has, and had at the time of the proceedings under consideration, some recognized meaning that may be resorted to as evidence of the intent of the parties, and from which may be determined what effect ought in equity to be given to the proceedings and decree in the Bickley suit.

In *Bosley* v. *Bosley's Exrs.* (1852), 14 How. 390, 396, this court (by Mr. Chief Justice Taney) said, with respect to a somewhat similar lease made by a resident of the City of Baltimore for lands in Baltimore County:

"In the case before us, the interest which the testator had in this land at the time of making his will, was converted into money by his contract with Armstrong. It was a sale and an agreement to convey his whole interest in the land. It is, therefore, unlike the case of a lease for years, or of ninety-nine years, renewable forever, in which the lessor retains the reversion, and does not bind himself to convey it on any terms to the lessee. The form of the contract adopted in this instance, between the testator and Armstrong, is in familiar use in the sale of lots in the city of Baltimore and the adjacent country. It has nearly, if not altogether superseded the old forms of contract, where the vendor conveyed the lands, and took a mortgage to secure the payment of the purchase money—or gave his bond for the conveyance, and retained the legal title in himself until the purchase money was paid. And it has taken the place of these forms of contract, because it is far more convenient, both to the seller and the purchaser. For it enables the vendee to postpone the payment of a large portion of the purchase money

until he finds it entirely convenient to pay it; and, at the same time, it is more advantageous to the vendor, as it gives him a better security for the punctual payment of the interest; and while an extended credit is given to the vendee, it is to the vendor a sale for cash. For if his ground rent is well secured, he can, at any time, sell it in the market for the balance of the purchase money left in the hands of the vendee. It will be observed that the rent reserved is precisely the interest on the amount of the purchase money remaining unpaid."

That leases for ninety-nine years, renewable forever, were common in Maryland, and therefore presumably well understood in Washington at the time of the Bickley foreclosure, appears from *Banks* v. *Haskie* (1876), 45 Maryland, 207, 213, 217; *Myers* v. *Silljacks* (1882), 58 Maryland, 319, 330; *Ogle* v. *Reynolds* (1891), 75 Maryland, 145, 150; *Jones* v. *Rose*, 96 Maryland, 483, 484. It is contended that these cases, and especially *Banks* v. *Haskie*, show a departure from the principles that anciently obtained in that State, and that the contracts between Blodget and his lessees were made in view of the law as understood in the year 1801. We need not stop to discuss this, because we are dealing with the term "ground rents," not as a term of law, but as a term of description, and we cite the Maryland cases as historical authorities, irrespective of their authority as law.

The contention of the appellant that the term *ground rents* as used in the proceedings and deeds in question, imported, only the rents that were to accrue during the residue of the 99-year terms of the Daugherty and Frethy leases, respectively, will not bear analysis.

In the first place, it was of the essence of both leases, that the terms were "ninety-nine years, *renewable forever*." The rent was to be the same for the extended terms as for the initial term of ninety-nine years. It certainly cannot have been within the contemplation of

the parties that the lessee or his assigns would not find it advantageous to renew at the end of ninety-nine years. The lessees were required to put substantial buildings upon the lots. And all the circumstances show that the parties contemplated that long before the expiration of the lease, the lands demised would be in the midst of a real, and not a "paper" city.

Moreover, the theory that it was intended to separate the right to the rentals until the year 1900 from the right to those that would accrue under renewals of the term, presupposes that the parties intended to separate the ground rents from the reversion. But such a separation is hardly conceivable. The only real security that the lessor had for the payment of the rents was the right reserved to him to enter and repossess the land until the arrearages were paid, or to terminate the lease should they not be paid. It is obvious that if the owner of the ground rents had no right to the estate upon the termination of the lease, his action in terminating it would benefit not himself, but the owner of the reversion. In short, this view would leave the payments to accrue during the residue of the ninety-nine years, no longer entitled to be designated as "ground rents." They would in effect stand as ordinary choses-in-action, resting for security upon the personal responsibility of the lessees, or their assignees in possession; subject to be rendered valueless by the insolvency of the lessee, or perhaps defeated, so far as the assignee's liability was concerned, by an assignment to a pauper. *Valliant* v. *Dodemede*, 2 Atk. 546; 26 Eng. Reprint, 728; *Lekeux* v. *Nash*, 2 Stra. 1221.

Nor is it reasonable to suppose that the parties intended to reserve in Blodget any estate in the lands, present or future. We say *the parties*, because in equity the decree, and the deed made thereunder, must, we think, be deemed to be the act of Blodget as well as of Bickley and the other parties to the cause.

The action was not, as it has been termed by counsel, a "creditor's suit." It was a foreclosure suit, brought to enforce the mortgage that Blodget had given for the purpose of securing to the fortunate holders of winning tickets in his much advertised lottery the prizes he had promised them. That all of Blodget's interest in the lands was pledged under the mortgage has already been stated; that he recognized his equitable obligation is evident from the record. In the common law action brought by Bickley against him in Philadelphia, he agreed that the jury might act as arbitrators not only with respect to the amount of money due from him to Bickley, but with respect to enforcing the award upon his land in the District of Columbia. When the foreclosure suit was commenced, he aided it by admissions, consents, and stipulations, showing himself in every way willing to forward the object aimed at by Bickley, namely, to subject the mortgaged property to the performance of his obligations arising out of the lottery scheme.

It was clearly the purpose to sell all the beneficial interest that Blodget had in the several plots in question, subject to the leases. This reserved interest was denominated "ground rents," (using a phrase evidently in popular use), without distinction as to their duration, and therefore presumably meaning that they should be perpetual, as well as the leases under which they were derived; but subject, of course, to commutation by the exercise of the lessee's option of purchase at an amount of which the annual rental was the equivalent of eight per centum.

The proceedings in the Bickley-Blodget suit show beyond cavil or question that it was the purpose not only of the parties to the action, but of the court, that all of Blodget's right, title and interest in Lot 20 should be sold towards paying the debt he owed to the complainant. The reservation of any interest in Blodget was inconsistent with

the very object of the suit. The reversion would be practically valueless for approximately ninety years; its then present purchase-value would be altogether insignificant. A purpose to reserve it in Blodget is not supposable. If it had been thought of as a substantial interest, separate from that described as "ground rents," it would have been mentioned, as it was mentioned, and in terms included, in the decree made on the supplemental bill. In no event would Blodget have been permitted to retain it.

Nor is there any room to doubt that bidders at the sale, including the successful bidders who became the purchasers, supposed that in buying the "ground rents" they were buying an investment security representing the substantial fruits, and the entire fruits, of ownership reserved by Blodget on the leases;—and not for mere terms of ninety nine years, but for such terms "*renewable forever.*" That the interest of Blodget sold for its fair market value is beyond question, for otherwise the court would not have confirmed the sales.

After the sales were confirmed, only two things remained to be done in order to carry the decree of the court into effect so far as concerned the passing of title. One was—"The payment of the whole purchase money for the respective parts of the said property so sold;" the other was that "the said trustee by a deed or deeds good and operative in law, to be acknowledged, etc., shall give, grant, bargain and sell, release and confirm to the respective purchasers and their heirs respectively" the property sold; with . er and Munroe joining, in order to make sure that no legal title should remain outstanding.

There is no doubt that the purchase price was paid; indeed, one of the purchasers in question was Bickley, the complainant, for whose benefit the sale was made. Such payment being made, the purchasers at once became the owners, in equity, of the reversionary interest of

Blodget. But the decree entitled them to the legal title.

And deeds of conveyance were made in order to carry out the decree. But one thing was lacking; the deeds were *not* "good and operative in law," because, although they described well enough according to the common intent what was intended to be conveyed, they did not define it according to the legal formula. And so the form of the deeds was undoubtedly defective. This, upon all the evidence, was a mistake, pure and simple. And it was the mistake of a public officer. To say that when such a mistake occurs in carrying out the decree of a court of equity,—a court possessed of full jurisdiction over the subject-matter and all the parties—harmful consequences shall be permitted to fall upon the purchasers who, in reliance upon the apparent regularity of the proceedings, have paid the purchase-money to the officer of the court in the belief that they would get as good a title as the court could give them, and as good as the court could require any of the parties before it to give them,—would be nothing less than a reproach upon the administration of justice.

The equitable principles upon which our decision must turn, are simple and fundamental. Equity regards that as done which ought to be done. It looks to the true intent and meaning, rather than to the form. It relieves against the consequences of accident and mistake, as well as of fraud.

In *Lytle* v. *State of Arkansas*, 9 How. 314, 333, this court (by Mr. Justice McLean) said: "It is a well established principle, that where an individual in the prosecution of a right does everything which the law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him." In *Williams* v. *United States*, 138 U. S. 514, 517, the court (by Mr. Justice Brewer), said: "It cannot be doubted

that inadvertence and mistake are, equally with fraud and wrong, grounds for judicial interference to divest a title acquired thereby. This is equally true, in transactions between individuals, and in those between the government and its patentee. If, through inadvertence and mistake, a wrong description is placed in a deed by an individual, and property not intended to be conveyed is conveyed, can there be any doubt of the jurisdiction of a court of equity to interfere and restore to the party the title which he never intended to convey? So of any other inadvertence and mistake, vital in its nature, by which a title is conveyed when it ought not to have been conveyed." See, also, *Morrison* v. *Stalnaker*, 104 U. S. 213; *Ard* v. *Brandon*, 156 U. S. 537, 541; *Duluth & Iron Range R. Co.* v. *Roy*, 173 U. S. 587, 590.

In our opinion the averments of the bill herein, admitted by the demurrer, show that, with respect to the Daugherty and Frethy lots, the appellees have a good title in equity, but not at law, as against the appellant, and therefore are entitled to restrain him, and those claiming under him, from prosecuting an action of ejectment, or otherwise asserting title to those plots. And, with respect to the Fennell plot, the same result follows, for reasons above given, although appellees' title, besides being good in equity as against that of the appellant, is also good at law, and therefore might have been availed of as a legal defense.

Decree affirmed.